United States Court of Appeals

for the Second Circuit

APPENDIX

76-1069, 76-1077

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee, -against- JOHN DININO Defendant Appellant.	Docket No. 76-1077

On appeal from a judgment of the United States District Court for the Southern District of New York

APPELLANT'S APPENDIX

UNITED STATES COURT OF APPEALS
FILED
APR 21976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

KRAVET, HOEFER & RYAN
Attorneys for Appellant
JOHN DININO
277 Broadway
New York, N.Y. 10007
Tel. (212) 267- 5050

INDEX

PAGE

DOCKET ENTRIES.....1
INDICTMENT.....3
JUDGMENT.....8
TRIAL RECORD

Testimony of Government Witnesses

	Direct	Cross	Redirect	Recross
Philip Jackson	17	69	116	
Sidney Shalkin	1[illegible]	129		
Charles Penker	152	184	199	
Philip Cassese	203			
Samuel Hershkowitz	222	234	241	243
Ronald Levine	245	294		
Philip Cassese	311	332		
Sherman A. Ronson	380	406	418	419

Government Summation.....447

Court's Charge.....512

Exceptions to Charge.....554

Jury Requests for Testimony and Additional Instructions..561

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT JUDGE GRIESA 75 CRIM. 255.

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Michale D. Abzug, Sp. Atty. 791-1123
JOHN DININO VINCENT DEVITO	
7/30	
	For Defendant:

(12) STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed ✓	Marshal					
Violation	Docket Fee					
Title 18						
Sec. 894						
Consp. to extortionate. (Ct. 1) Collection of credit by means of extortion. (Cts 2-7)						
(Seven COUNTS.)						

DATE	PROCEEDINGS
3-14-75	Filed indictment and ordered sealed. S/W ordered. Pollack,J.
3-18-75	Indictment ordered unsealed. Pollack,J.
3-31-75	Case adjourned to 4-7-75 for deft John Dinino.....BRIEANT,J
3-31-75	DEF'T DE VITO - (Att'y Viviani present) - Pleads Not Guilty. Case assigned to J.Griesa. Motions ret. in 10 days. Bail at $5,000 P.R.B.....BRIEANT,J
4-1-75	Filed Notice of Appearance for Def't Vincent De Vito - For arraignment only - Arthur J. Viviani, 1290 Ave. of the Americas, NYC 10019 - Tel. #586-6006
4-9-75	Filed Notice of Apearance for Def't John Dinino - Oscar A. Bloustein, 200 Madison Ave. NYC - Tel. #532-9194
4-7-75	DEF'T JOHN DININO - (Att'y Oscar Bloustein present). Def't pleads NOT GUILTY - Bail continued.....COOPER,J

A1

DATE	PROCEEDINGS
--16-75	Filed papers rec'vd from Magistrate Raby (Mag. #75-423) - Docket Entry Sheets (2) - Indictment Warrants (2) - Disposition Sheet (1) - Appearance Bonds (2).
--17-75	[illegible] - Cont. bail - Trial Date Dec. 1st --[illegible] J.
--5-75	[illegible] - Filed Deft's affdvt & Notice of Motion for an order dismissing the Indictment.
--17-75	Filed Govt's Notice of Readiness for Trial.
--17-75	Govt Deft's Memo. in response to deft's motion to dismiss Indictment.
11-22-75	Filed transcript of record of proceedings dated April 11, 1975
11-26-75	Filed transcript of record of proceedings dated Oct 17, 1975
12-1-75	BOTH DEFTS - Jury trial begun... Deft DeVito motion to dismiss denied...
12-2-75	Trial cont'd.
12-3-75	Trial cont'd.
12-4-75	Trial cont'd...COUNT 3 DISMISSED by Court.
12-5-75	Trial cont'd. and concluded...JURY FINDS deft DININO GUILTY on Counts 1,2,4,5 and 7..Not Guilty count 6.....Deft DeVito GUILTY on Counts 1,2,4,5 and 7 and Not Guilty on Count 6....Sentences adjd to Jan.20-76 at 9:30 a.m. P.S.I. ordered. Bail cont'd as to both defts.....Griesa,J...
1-20-76	JOHN DININO - Filed Judgment(Atty.Oscar Blaustein,present)the deft is committed for imprisonment for a period of ONE YEAR on each of counts 1,2,4 and 5 to run concurrent with each other...Imposition of sentence is suspended on Count 7 and is placed on Probation for a period of TWO YEARS to be CONSECUTIVELY with prison sentence imposed...Deft. is released on bail pending appeal....Griesa, J.. (Ent.on 1-21-76)
1-20-76	VINCENT DE VITO - Filed Judgment(Atty.Peter Peluso,present)the deft is committed for imprisonment for a period of ONE YEAR on each of Counts 1,2,4 and 5 to run concurrent with each other. Imposition of sentence is suspended on Count 7 and deft is to be placed on Probation for a period of TWO YEARS to be served CONSECUTIVELY with prison sentence imposed...Deft is released on bail pending appeal. ..Griesa, J.....(Ent.on 1-21-76)
1-23-76	VINCENT DeVITO - Filed notice of appeal from judgment dated 1-20-76..Copy given to U.S.Atty's office and mailed to Peter J.Peluso counsel to deft....
-30-76	JOHN DININO - Filed notice of appeal from judgment drd.1-20-76..Copy given to U.S. Atty. and mailed to deft at 16 Lorna Lane..Munsey,N.Y.
-9-76	Filed transcript of proceedings dated December 1,2,3,4,5-1975 and January 20-1976.

JUDGE GRIESA

75 CRIM. 265

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x
UNITED STATES OF AMERICA :

- v - :

JOHN DINUNO and VINCENT DEVITO, : INDICTMENT

Defendants. : 75 Cr.

----------x

U.S. DISTRICT COURT
FILED
MAR 14 1975
S. D. OF N. Y.

COUNT ONE

The Grand Jury charges:

1. From in or about January, 1968, and continuing up to and including October, 1973, in the Southern District of New York, and elsewhere, JOHN DINUNO and VINCENT DEVITO, the defendants, together and with each other and with other persons to the Grand Jury unknown, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 894.

2. It was part of said conspiracy that said defendants would, and did agree to, and would and did, participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation, and property of Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz, in order to collect and attempt to collect extensions of credit from said persons and to punish said persons for the nonrepayment thereof.

3. Among the means whereby the defendants would carry out their agreed upon unlawful purposes were the following:

(a) The defendant JOHN DINUNO would loan certain sums of money at rates of interest exceeding 50% per annum to Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz.

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(b) the defendant JOHN DININO would collect, and direct the defendant VINCENT DEVITO to collect, weekly payments of money which the defendant JOHN DININO claimed were owing to him by Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz.

(c) The defendants JOHN DININO and VINCENT DEVITO would make express and implicit threats of physical injury to Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz in the course of collect and attempting to collect said payments, and for the purpose of inducing Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz to make said payments.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants, in the Southern District of New York, committed and caused to be committed the following overt acts, among others:

1. In or about January, 1969, the defendant JOHN DININO met with Sherman Ronson at the Carter Cab Company, 6087 Broadway, Bronx, New York.

2. In or about October, 1971, the defendant JOHN DININO received a sum of money from Philip Jackson at Al's Taxi, 5973 Broadway, Bronx, New York.

3. In or about October, 1968, the defendant JOHN DININO met with Ronald Levine at the Carter Cab Company, 6087 Broadway, Bronx, New York.

4. In or about October, 1971, the defendant JOHN DININO loaned a sum of money to Sidney Shalkin.

5. In or about March, 1972, the defendant JOHN DININO loaned a sum of money to Charles E. Penker.

6. In or about August, 1969, the defendant JOHN DININO met with Samuel Herskowitz at the Carter Cab Company, 6087 Broadway, Bronx, New York.

7. In or about the months of April, May, and June, 1972, the defendant VINCENT DEVITO met with Philip Cassese at the Carter Cab Company, 6087 Broadway, Bronx, New York.

(Title 18, United States Code, Section 894)

COUNT TWO

The Grand Jury further charges:

From in or about January, 1969, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DINUNO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Ronald Levine, in order to collect and attempt to collect extensions of credit from said Ronald Levine and to punish said Ronald Levine for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT THREE

The Grand Jury further charges:

From in or about January, 1969, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DINUNO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Sherman Ronson, in order to collect and attempt to collect extensions of credit from said Sherman Ronson and to punish said Sherman Ronson for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT FOUR

The Grand Jury further charges:

From in or about October, 1970, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DINUNO and VINCENT DEVITO, the defendants, unlawfully,

wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Philip Jackson, in order to collect and attempt to collect extensions of credit from said Philip Jackson and to punish and Philip Jackson for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT FIVE

The Grand Jury further charges:

From in or about October, 1971, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Sidney Shalkan, in order to collect and attempt to collect extensions of credit from said Sidney Shalkan and to punish said Sidney Shalkan for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT SIX

The Grand Jury further charges:

From in or about March, 1971, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Charles Penker, in order

to collect and attempt to collect extensions of credit from said Charles Penker for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT SEVEN

The Grand Jury further charges:

From in or about January, 1970, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DINNO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Philip Cassese, in order to collect and attempt to collect extensions of credit from said Philip Cassese and to punish said Philip Cassese for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

Charles C. Fink 3/14/73
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

United States of America vs.

United States District Court

SOUTHERN DISTRICT OF NEW YORK

DEFENDANT JOHN DENNO

DOCKET NO. 75 Cr 265

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: January DAY: 20, YEA: 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Oscar Blaustein, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly participating in the use of extortionate means, that is, involving the use and express and implicit threats of use, of violence and other criminal means to cause harm to persons, reputations and property of said persons in order to collect and attempt to collect extensions of credit from, and to punish said persons for the nonrepayment thereof, and conspiring to do so as charged in Counts 1, 2, 4, 5 and 7.
18, USC, §894

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

ONE YEAR on each of Counts 1, 2, 4 and 5 to run concurrent with each other. Imposition of sentence is suspended on Count 7 and defendant is to be placed on Probation for a period of TWO YEARS to be served consecutively with prison sentence imposed.

Defendant is released on bail pending appeal.

SPECIAL CONDITIONS OF PROBATION

MICROFILM JAN 21 1976

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. DISTRICT COURT FILED JAN 20 1976 S.D. OF N.Y.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

Thomas P. Griesa

Date January 20, 1976

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be credible, believable, and you determine whether or not the Government has proven their case beyond a reasonable doubt.

So if I do nothing more but alert you to the fact now that you should keep your mind open and listen to the evidence, I will ask you to do that and I will return to you at the end of the case to prove to you, to argue with you that the Government has failed to prove a case beyond a reasonable doubt.

Thank you very much.

MR. PELUSO: If the Court please, the defendant DeVito waives an opening statement at this time.

THE COURT: The Government.

MR. ABZUG: The Government calls Philip Jackson.

P H I L I P J A C K S O N , called as a witness in behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Jackson, how old are you, sir?

A 45.

Q Directing your attention to early 1970 were you employed, sir?

A In early 1970? Yes.

Q By whom, sir ?

A Al's Private Car Service.

Q Where was Al's Private Car Service located in early 1970?

A In The Bronx on 242nd Street and Broadway.

Q How were you employed by Al's --

A I was a driver.

Q What was your average weekly salary when you first began working there?

A When I worked there full time I made in the vicinity of $350 a week.

Q Could you describe to the jury briefly how that salary was computed.

A Well, it wasn't a salary. We drove our own cars. It was a private car service, and we worked a twelve hour period and I was working seven days a week. I used to work from six in the morning till six at night, and we would take fares to the airport and downtown Manhattan and whatever we booked, for example, if we booked $100 during the day we received $75 of the bookings, and the boss that owned the cab stand received 25 per cent. And we paid our own gas and got our own tips.

Q Mr. Jackson, do you know a man by the name of John Dinino?

A Yes, I do.

Q Is John Dinino in the courtroom today?

A Yes, he is.

Q Could you please identify him to the Court and jury.

A Yes; he's the man sitting there in the red jacket.

MR. ABZUG: Your Honor, let the record reflect that the witness has identified the defendant John Dinino.

Q When did you first meet Mr. Dinino?

A I met Mr. Dinino late in 1970.

Q Where, sir?

A In Al's Car Service.

Q Could you describe to the jury the circumstances leading up to your first meeting with the defendant Mr. Dinino?

A Well, I had started working for Al's Car Service, as I said, in early 1970, and, as I said, I worked there seven days a week, and during the nine or ten months prior to speaking to Mr. Dinino I had noticed him on many occasions in the car service collecting and giving money to different individuals.

Q When? Can you specify a date?

A Well, he used to come Mondays, Wednesdays and Fridays.

Q Did you see him arrive, sir?

A If I was in the stand. If I wasn't out on a call at that hour I would see him come in. There were times I would come in and he would be there, and sometimes I was there and he would walk in.

Q How would he arrive, sir?

A He'd come in a Cadillac car and pull up in front of the cab stand and walk in.

Q What, if anything, would he do when he entered Al's Taxi?

A As I said, he either went over to different individuals and collected money,they gave him money, or on occasion he -- I saw him give other individuals money.

Q And do you recall who some of these individuals were, sir?

A Yes, I do.

Q Could you give the jury some of the names?

A Sandy Ronson, Tommy Brando, Sid Shalkin, Joe Cassese, Billie Cassese.

Q Continue with your description of how you met the defendant.

A Well, as I said, I was working there and from observing Mr. Dinino giving and taking money from different individuals in the short time I found out that he was the

local Shylock in the area.

MR. PELUSO: I am going to object to that, Judge.

THE COURT: Yes, sustained. Strike that.

Q Do you know a man by the name of Louis Materasso?

A Yes, I do.

Q Did there come a time when you had a conference --

THE COURT: Wait a minute. What is this name?

MR. ABZUG: Louis Materasso.

Q Did there come a time when you had a conversation with Mr. Materasso?

A Yes, there did.

Q Where did this conversation occur, sir?

A In Al's Taxi.

Q Approximately when did it occur, sir?

A Oh, it occurred in late 1970.

Q What did you say to him and what did he say to you?

MR. WALLACH: Objection, your Honor.

MR. ABZUG: Your Honor, this is being offered solely for the purpose of showing motive and intent of the witness in his meeting with John Dinino. The Federal Rules of Evidence sub-section 3 of Rule 803 provides that such testimony may be admissible.

THE COURT: Let me look at that. What Sub-

section?

MR. ABZUG: Sub-Section 3 of 803, your Honor. Existing mental emotional or physical condition.

THE COURT: Just a moment.

What about that, defense counsel?

MR. WALLACH: May we step up, your Honor?

THE COURT: All right.

[At the side bar:]

MR. WALLACH: If it please your Honor, I object to it. I am aware of the rule. I am also aware of the Second Circuit -- I'll say this for the U. S. Attorney's benefit -- it's pretty liberal in allowing prior or similar occurrences. However, to show motive or background, however your Honor, I am constrained to request that your Honor not charge the jury, or instruct the jury, and I say this respectfully, that they are not to consider this in regard to the character of the defendant. Now, in United States v. --

THE COURT: Well, I am not clear. What is this testimony going to be?

MR. ABZUG: It's this, your Honor: He had a conversation with Louis Materasso in which he asked Louis Materasso if there was a place where he could get some money. Louis Materasso indicated he could get some money

from John Dinino and arranged a meeting with Mr. Dinino. It prefaces the meeting.

THE COURT: Then will he testify that he went with --

MR. ABZUG: Mr. Materasso then had a conversation with --

THE COURT: All right, I will overrule the objection.

MR. WALLACH: Your Honor, may I request that the U. S. Attorney not argue in the presence of the jury? He made an offer of proof in the presence of the jury.

THE COURT: It was just the discussion of the rule. If we can avoid all these side bars it would be helpful.

All right.

MR. WALLACH: Exception.

[In open court:]

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes.

BY MR. ABZUG:

Q Mr. Jackson, you had a conversation with Louis Materasso in late 1970 at Al's Taxi. What did he say to you and what did you say to him?

A Well, I had been gambling heavily, and I needed

money, and as I said from my observances over the months that I had been working there --

THE COURT: He is asking you what was said.

THE WITNESS: Okay. I'm sorry.

THE COURT: That's all.

A I went to Mr. Materasso and I asked him to please ask John DeVito if he would lend me money.

Q And what did Mr. Materasso respond?

A He told me he would speak to him and he would make an appointment for me to speak to John DeVito.

Q Is it John Dinino or John --

A John Dinino, I'm sorry.

MR. PELUSO: Your Honor, I am going to respectfully object to what the District Attorney just did.

THE COURT: Overruled.

Q Did you subsequently meet John Dinino?

A Yes, I did.

Q Where, sir?

A I met him in the candy store two doors down from Al's Taxi.

Q When, sir?

A The subsequent -- the following -- well, it was on a Monday evening because I had spoken to Materasso on the Friday about it.

Q How many days elapsed between your conversation with Mr. Materasso and your subsequent meeting with Mr. DiNino?

A Two days. The weekend.

Q Who was present when you met Mr. Dinino?

A Materasso, myself and Dinino.

Q Did you have a conversation with Mr. Dinino?

A Yes, I did.

Q What did he say to you and what did you say to him?

A I told him I wanted to borrow money. He asked me how much. I told him I wanted $500. And he explained to me that his office worked -- they didn't lend out $500 to a new customer, and that the most I could borrow at the beginning from the office was $200.

And he explained to me that there were two types of loans I could take, and offered me my choice.

Q What did he say about the two types of loans, sir?

A Well, there was one type of loan was called a "Vig Loan". He explained to me that for every $100 that I borrowed each week I would have to give him back $5.

For example, if I borrowed $100, I'd have to give him $5 a week back for as long as I kept the $100. The loan would end when I paid him the principal of $100 back.

So that if I took the money, the $100, and I kept it for a year I would be giving him $5 a week for a year back, and then still owe him the $100. If I took it and paid him back the $100 two weeks later I would have given him $10 in interest and his $100 back.

Q What was the second type of loan?

A The other type of loan was a 6 for 5 loan it is called. I would borrow -- if I borrowed $200 I was obligated to pay him --

THE COURT: Say, let's not have the paper shuffling back there. Let's have it quiet in the courtroom.

Q I'm sorry, Mr. Jackson. Please proceed.

A The other type loan was a 6 for 5 loan, or if I borrowed $100 I would have to pay him back $120 in payments of $20 a week for six weeks. And if during the six weeks, if I didn't make the $20 payment, I would have to give him $6 and the $20 would go on to next week.

Q Did you at that time, sir, make a selection between these two loans?

A Yes. I chose the "Vig Loan", the first one I

had explained.

Q What, if anything, did you receive at that first meeting?

A I didn't receive anything. At the first meeting he told me he would go back and find out if it was approved and he didn't see any reason why it wouldn't be, and told me I could expect the money by the end of the week.

Q Following this conversation with John Dinino did you have a subsequent meeting with John Dinino?

A Yes.

Q When, sir?

A On that Friday of that week.

Q Where, sir?

A Well, he met me in Al's Taxi and took me outside.

Q Did you have a conversation with him?

A Yes.

Q Approximately what time of the day?

A Well, it had to be late in the afternoon, around 5, 5:30.

Q What did you say to him and what did he say to you?

A He told me my loan was okay, and he gave me the $200 and explained to me again the arrangements which was every Friday I would give him $10 for as long as I wanted

the money, and the loan would continue until I gave him back the $200 principal.

Q Now following your receipt of this first $200 in late 1970,did you ever see Mr. Dinino again?

A Yes.

Q Where, sir?

A In Al's Taxi.

Q When, sir?

A Well, almost every Monday, Wednesday and Friday.

Q What, if anything, happened when Mr. Dinino would make his bi-weekly, or bi-daily appearance?

A Well, as far as what happened to me was every Friday I paid him $10 for a length of time until I approached him again.

Q How long did you pay the $10 to John Dinino?

A I paid him $10, I'd say for about two and a half, three months.

Q Then what happened, sir?

A I approached him and I asked him if he would increase the loan to $500 now that I had been meeting my payments each week on time.

Q Where did this conversation occur?

A At Al's Taxi.

Q What, if anything, did John Dinino say?

A He again told me that he would let me know the next time he came back, and if everything was all right, he would give me the additional $300.

THE COURT: You were paying him how much? You borrowed $200?

THE WITNESS: I had a $200 loan I was paying him $10 a week for, and I asked him to increase it to $500 which would have made my payments $25 a week.

Q Following this conversation that you had with Mr. Dinino did you see him again?

A Yes.

Q When, sir.

A As I said, I saw --

THE COURT: I am sorry, what was his response to your question?

THE WITNESS: His response was that he would give me the additio[illegible] $300.

Q When was thi[illegible], sir?

A The Friday of the same week.

Q How did he give you this $300?

A He gave it to me in cash, and to the best of my recollection it was twenties and tens.

Q Following this second loan did you have another meeting with John Dinino?

A Yes, I did.

Q Where was this, sir?

A In Al's Taxi.

Q Who was there?

A Well, there were other drivers there. Mr. Dinino and I were there.

Q Approximately when did you have this other meeting?

A It would have been in late Spring of '70. In April, around then, April or May.

Q Did you have a conversation with Mr. Dinino?

A I'm sorry, '71, not '70.

Q Did you have a conversation with Mr. Dinino?

A I did.

Q What did he say to you and what did you say to him?

A I told him I wanted to borrow more money and that I had been paying my first loan off on time each week, and that I would be able to handle an additional loan because I was working there seven days a week and it wouldn't be a hardship for me to be able to pay him, and I requested $500 more on the second type of loan.

Q Now, what was the second type of loan, sir?

A The one I explained, 6 for 5.

Q What, if anything, did Mr. Dinino respond?

A He again reminded me that initially the most he could get me would be $200, and if I could carry that we'd discu s the balance later on.

Q Did you have another meeting with Mr. Dinino after that?

A Yes.

Q Where was this other meeting?

A At Al's Taxi.

Q How much time elapsed between the conversation with Mr. Dinino --

A Two or three days.

Q What happened at this other meeting?

A He gave me $200 and explained to me that this was a different type of loan and that since I borrowed $200 I would be paying him back $40 a week for six weeks.

Q What day did you receive this $200?

A Well, this was on a Wednesday and we agreed that since my other payments were on Friday we -- I'd make all my payments on a Friday.

Q Now following that conversation --

THE COURT: Wait a minute. How much would be due each week on the - -

THE WITNESS: The second loan?

THE COURT: [continuing] -- on the second loan?

THE WITNESS: Second loan would have been $40 a week.

THE COURT: $40.

Q Following this conversation did you see Mr. Dinino again?

A Yes.

Q Where, sir?

A At Al's Taxi.

Q Approximately what time, sir?

A Well, as I said, he always came in between four-thirty and six o'clock.

Q What would transpire at these meetings?

A Well, on Fridays I would pay him the $25 -- I would pay him at that time I would have been giving him $65. $25 for the first loan and $40 on the second loan for a period of six weeks.

Q How long did you continue making these weekly payments to Mr. Dinino at these rates?

A Well, I would pay Mr. Dinino -- the $25 payment continued all along. The other payment, the $40 kept fluctuating. Two or three weeks would go by and I would pay him $80 or $120 on the second loan, and at that time I would ask him to renew the second loan.

In other words, if I paid him back $120 and I had owed him $20, he could reimburse me and build it up to $200. And at that time I also requested him to increase the loan to $500, the second loan.

THE COURT: I want to get this clear. You kept paying him the $25 regularly?

THE WITNESS: Every week.

THE COURT: What happened on your 6 for 5 loan?

THE WITNESS: That loan lasted six weeks. I borrowed $200 originally from him and I paid him $40 a week. If I had paid him for six weeks that loan would have been wiped out. I never paid him for the six weeks, because I kept renewing the loan at the end of three or four weeks and bringing the principal back up to $200 again.

THE COURT: Well, did you pay him regularly the $40 a week?

THE WITNESS: Yes. On occasion if I missed the $40 I would have had to pay him $12 for missing the payment. But at the beginning at that time in the relationship I was paying him regularly. I would pay him the $40.

BY MR. ABZUG:

Q How many times, sir, did you renegotiate this second type of loan?

A Well, I'd say close to a dozen over the period

of the year or so.

Q Could you specify what period of time that would be for the jury?

A Well, the second loan, again the first loan I took out in the beginning of '71. The second loan I took out in the Spring approximately of '71, and by late Spring I had increased the second loan to $500. So by late Spring, or early summer, I had owed Mr. Dinino $500 on that first loan that I took out at the beginning of the year, which I was paying $25 a week for, and on the second loan eventually by the summer I had owed him $500 and was paying him $60 a week for ten weeks. Started making the payments in ten week periods rather than in six week periods.

So in fact I was giving him back for the $500 I paid him $60 a week for ten weeks, I would be giving him back $600 for his $500.

Q During this period extending from early '71 to approximately the Fall of '71, how often would you see John Dinino?

A Almost every Monday, Wednesday and Friday.

Q What, if anything, would transpire at these meetings, sir?

A When I saw him I paid him my money. At other times I saw him when it wasn't my day to pay him we had no --

nothing to do with each other, and I just saw him collecting from other people who had a different payday. Different day they had to make their payment.

Q Who were some of these other people that you saw pay money to John Dinino in this period of early 1971 to the Fall of 1971?

A Sidney Shalkin, Tommie Brando, Louis Materasso, Sherman Ronson, Phil Cassesse.

Q During this same period, sir, did you make payments to anyone else?

A Yes.

Q Who, sir?

A Mr. Dinino had a partner named Vinnie.

MR. WALIACH: Objection to the word "partner," your Honor. That calls for a conclusion.

THE COURT: Yes. Strike that. You tell us what you observed.

[continuing] Well, on one occasion Mr. Dinino brought in another gentleman who was called Vinnie.

Q Is Vinnie in the courtroom today, sir?

A Yes, he is.

Q Would you identify him for the jury, please.

A Sitting at the end of the table.

MR. ABZUG: Let the record reflect, your Honor,

that the witness has identified the defendant DeVito.

Q Who was present at this first conversation with Mr. DeVito?

A Mr. Dinino was.

Q And you had a conversation?

MR. BLOUSTEIN: Excuse me, your Honor. May we fix a date on this?

THE COURT: Yes.

THE WITNESS: This was approximately in mid-1971.

Q Where did this first conversation occur?

A In Al's Taxi.

Q Did you have a conversation with Mr. Dinino?

A Yes.

Q What did he say to you and what did you say to him?

THE COURT: Conversation with whom?

THE WITNESS: Mr. Dinino.

THE COURT: Dinino. In other words, who was there?

THE WITNESS: Mr. Dinino came in with Mr. DeVito.

THE COURT: So the three of you were there.

THE WITNESS: The three of us were there, and other people, too.

THE COURT: All right.

THE WITNESS: It was in the cab stand.

THE COURT: All right. What was said by whom?

THE WITNESS: Mr. Dinino came in and introduced Mr. DeVito to myself and the other fellows there and explained that this was his partner and from now on either he or his partner would come down to make collections.

Q Subsequent to that first conversation did you see Mr. DeVito again?

A Yes.

Q When, sir?

A Well, it started out that for a two-week period or so Mr. Dinino would come, and then for two weeks Mr. DeVito would come. They took turns coming.

Q Did you actually make payments to Mr. DeVito?

A Yes.

Q You mentioned that you saw Mr. Dinino meet with other cab drivers at Al's Taxi. Did you ever overhear any of their conversations, sir?

A Yes.

Q What, if anything, was said?

A Well, he'd come into the cab stand --

MR. WALLACH: Objection to the use of the word "he", your Honor. He should specify which, who the talker is.

MR. ABZUG: I specified in the question, your Honor, John Dinino.

Q What was said?

A Mr. Dinino would come in on most every occasion to the cab stand to collect money, and he would go over to individuals such as myself or the others that I named, and ask them for their payments. In cases when they weren't there, he either would leave word that I'll tell so and so and I'll be back on Wednesday, or, tell him to leave his money, or on occasion when they were there and they didn't pay on their particular day he would tell them that they had better have their money the next time, or, I'd see you next time. If they didn't pay on the second trip, he got a little more aggressive with them or --

MR. BLOUSTEIN: I object to that, your Honor.

THE COURT: Yes. What was said? What was said?

THE WITNESS: Well, I heard on occasion him tell somebody who was behind a week that I'll be back next week, I don't want to hear any more bull shit, I don't want your payment and I don't want to hear any more stories.

Q Now, what were the reasons you borrowed money from Dinino?

A Me personally?

Q Yes, you personally.

A Well, I was and I guess I always will be, I was a compulsive gambler and I needed money to gamble.

Q Where did you gamble, sir?

A Anywhere. I gambled at racetracks, I gambled with bookmakers, I gambled anywhere I could.

Q Did there come a time when you had a conversation with Mr. Dinino --

A Yes.

Q [continuing] -- about gambling?

A Yes.

Q When did this conversation occur, sir?

A Somewhere near the end of '71. Probably was right around October or November of '71. In the Fall of '71.

Q Before I ask you what the nature of that conversation was, sir, what were some of the names of the bookmakers that you said you bet with?

MR. BLOUSTEIN: I object to this, your Honor.

MR. ABZUG: I ask your Honor to take it subject to connection. It will become relevant.

THE COURT: All right, I will overrule the objection.

Q What were some of the names?

A The names of the bookmakers that I gambled with?

Q Yes.

A I gambled with a bookmaker named Vinnie, I gambled with a bookmaker named Augie, and Mr. Dinino became a bookmaker and I gambled with Mr. Dinino.

MR. BLOUSTEIN: I object to that now, your Honor, and I ask for a mistrial here.

THE COURT: Overruled. Motion denied.

Q When did you begin gambling with Mr. Dinino?

A In the Fall of '71.

Q Could you describe to the jury how that was initiated?

A Well, all through that time Materasso, one of the fellows was the dispatcher in the service, and being a dispatcher he was there twelve hours a day and he would be present at all times to see Mr. Dinino when he came in, or any other one of us, and the times if we were going out on a call we might leave the money with Louis Materasso.

In any event, Louis Materasso made me aware of the fact that John Dinino was booking also and that he thought he could get me a number to gamble with through Mr. Dinino.

Q Did you subsequently receive a telephone number, sir?

A Yes.

Q When did you begin using this telephone number?

A In the Fall of '71.

Q Could you describe to the jury how you utilized this telephone number?

MR. BLOUSTEIN: If your Honor please, may I make an objection for the record that this colloquy now taking place concerns something not in the indictment and is a crime outside the purview of this indictment and therefore it is prejudicial to my client, John Dinino.

MR. ABZUG: That is certainly not true, your Honor.

THE COURT: No, no. The jury is well aware that the only alleged crimes being tried in this case are the alleged violations of the United States laws about using extortionate means to obtain repayment of loans.

Now, I think it is useful, however, to make it very clear that if other activity which may be criminal as the defense counsel suggested, that if there is testimony about that it really isn't up to the jury to -- the jury is not trying for any such alleged crimes, the jury is not allowed to speculate as to whether it would or would not be some other crime. It is relevant here, if the jury believes this evidence, it is relevant here solely as part of the

circumstances relating to the crimes charged here, and that is all that is being introduced.

Is that right, Mr. Abzug?

MR. ABZUG: That's correct, your Honor.

THE COURT: All right. So we can all understand each other on that.

Go ahead, Mr. Abzug.

MR. ABZUG: Thank you, your Honor.

Q I believe the last question to you, Mr. Jackson, was how you utilized this telephone number to gamble.

A You mean the procedure that I went through?

Q Yes, sir.

A Well, a week -- a gambling week would start on a Monday, and I had a telephone number that I called to place any kind of bet I wanted, whether it was on horses or ball games or any type of sporting activity that there is gambling on. And I would call that particular number that I was given and I was given a code name --

Q By whom were you given a code name, sir?

A Mr. Dinino.

Q Do you recall what that code name was?

A I am not sure. I think it was Phil for John or Phil for something. I'm not sure what the code was. But, in any event, I'd call this number and the man after I

gave him my code name he would give me -- he would ask me what I wanted to bet on and I would tell him what kind of sporting event it was.

If it was football he would tell me the point spread and I would place my bet on the phone, or basketball or hockey, or whatever it might be, or horses. And I could use the phone from Monday till Sunday of that week.

Q Now, could you describe to the jury how you would pay off using wages and how you would collect from anyone?

A Well, at the end of the week on Sunday night there was a tally kept, and if I was plus at the end of the week I would meet Mr. Dinino on Tuesday, Tuesday was the day we decided that we would pay each other off.

If I won he would meet me and give me the money I won, and if I lost he would meet me and I would give him the money I lost.

Q Where did you meet?

A At Al's Taxi.

Q To your knowledge did Mr. Dinino work at Al's Taxi?

A Work there? No.

Q How long did you utilize these telephone numbers?

A Oh, about three months.

Q Now, sir, you indicated that in the Fall of '71 you had a conversation with Mr. Dinino about gambling; is that correct?

A Yes.

Q Where did this conversation occur?

A In Al's Taxi.

Q Who was there?

A Mr. Dinino and myself.

Q Approximately what time did it occur, sir?

A It had to be again, it had to be always between 4:30 and 6.

Q What did he say to you and what did you say to him?

A Well, I asked him for -- I asked him, I had been paying these two loans off that I described to you, and I asked him for an additional loan. I was gambling losing money and I needed more money and I asked him if he would lend me some more money.

Q What did he respond, if anything?

A He told me he couldn't, that I had reached my limit, on both loans.

Q What, if anything, were your payments at that time to Mr. Dinino and Mr. DeVito?

A At that time I was paying $25 on the $500 Vig

Loan and I was paying $60 on the $500 loan. I was paying a total of $85 a week.

Q What if anything, sir, did you do as a result of this conversation with Mr. Dinino?

A Well, I had a friend at Al's Taxi who hadn't as yet borrowed money from Mr. Dinino, and I asked him if he would go to Mr. Dinino and borrow $500.

Q What was this friend's name, sir?

A Ronnie Levine.

Q What happened after that?

A I asked him if he would borrow $500 from Mr. Dinino and give it to me and I would make the payments for him. And Mr. Dinino would never be aware of the fact that he had loaned it really to me.

Q What happened then?

A Ronnie Levine spoke to Mr. Dinino and two or three days later gave me the $500.

Q Where did he give you the $500, sir?

A He met with Mr. Dinino in the candy store next to Al's Taxi. He was there a few minutes and came out and gave me the $500.

Q Following receipt of this $500 loan that for convenience sake we will call the Levine loan, did you see Mr. Dinino again?

A Yes.

Q Where, sir?

A At Al's Taxi.

Q When, sir?

A Almost every Monday, Wednesday and certainly on Fridays.

Q After the Levine loan approximately how much were your payments?

A Well, I was paying $65 on the two loans of my own and $25 on -- I'm sorry, $85 on the two loans of my own and $25 for the Levine loan, I was paying $110 a week.

Q How long did you continue to make payments on the Levine loan to Mr. Dinino?

A Till very early '72.

Q And then what happened, sir?

A Well, in very, very early, probably in January of '72, there came a time that I lost in one week of gambling $1800. And when Mr. Dinino came to collect his $1800 --

Q On what day was this, sir?

A On a Tuesday.

Q Where, sir?

A At Al's Taxi. I didn't have the $1800 to pay him, and I told him that I wouldn't be able to pay him for a couple of weeks, I would be able to get the money then and

not to worry about it since I had been a paying customer and I had never given him any trouble before, to bear with me for the two weeks and I would get him his money.

Q Following that conversation what did Mr. Dinino respond?

A He told me he would wait the two weeks.

Q Following that conversation did you see Mr. Dinino again?

A Yes.

Q Where, sir?

A At Al's Taxi.

Q Approximately what time, sir?

A Always between 4:30 and 6 at night.

Q Who was there besides yourself and Mr. Dinino?

A On what particular occasion are you talking about?

Q This is the next meeting following the discussion about the $1,800.

A Well, I don't know exactly who. Myself and Mr. Dinino were there.

Q Did you have a conversation with him, sir?

A Yes.

Q What did he say to you and what did you say to him?

A Well, on the very next evening you are talking about?

Q Yes.

A Nothing really. He just, as I said, on Tuesday evening I had lost the $1,800, and I had indicated to him that it would take me two weeks to get his money and he went along with that. So the following evening, on a Wednesday when he came in we didn't have much to say, it was just the regular meeting that he came by to collect from the fellows.

Q Did you subsequently discuss the $1,800 gambling debt that you owed to Mr. Dinino?

A Yes.

Q When was this, sir?

A Two weeks later from the first time I had met him about it.

Q What did you say to him and what did he say to you?

A He asked me for my money, as I promised him, and I tried to stall him and tell him that I wasn't able to raise the money, but not to worry, I certainly would get it for him, but it would take maybe another week or two more.

Q What did Mr. Dinino respond?

A He wasn't satisfied with that. He told me that it wasn't for his money and he was working for an office and he wasn't responsible and he didn't want to hear any more stories and he wanted his money and expected me to have it on Friday when he returned for his normal payments from me on my other loans.

Q What did you do after that, sir?

A Well, right after that I got very worried and concerned and frightened, because I had no way of --

MR. BLOUSTEIN: I object to that, your Honor.

THE COURT: Strike that, please. Just tell us what happened.

MR. ABZUG: Your Honor, if I may interject, I believe that the witness' state of mind is somewhat relevant in this case.

THE COURT: No, not at this point, please. Let's just have the events.

Q After this conversation what did you do, sir?

A Well, I went directly the next evening to Gambler's Anonymous, and I had some people who I had --

THE COURT: Let me see the lawyers up here for just a minute.

[At the side bar:]

THE COURT: I assumed when I let you go into the

gambling that this would be involved with the repayment of loans. As I understand it he is not -- I mean, how does the gambling get connected with this indictment?

MR. ABZUG: For two reasons, first, your Honor. I would argue that under 894 an extension of credit does not have to be usurious. It merely has to be --

THE COURT: A loan of money.

MR. ABZUG: Well, more an extension of credit. For example, Mr. Dinino now is extending credit to Mr. Jackson by letting this $1800, the $1800 --

THE COURT: You are saying that 894 can involve a gambling debt.

MR. ABZUG: Yes.

THE COURT: Allright. Have you got cases on that?

MR. ABZUG: Not that I can cite to you at the moment, your Honor, but I think the language in the statute clearly supports that. Second I will attempt to find cases if your Honor wishes.

The second point I wish to make is there came a time, and the witness will testify to this, that he became unable to pay the $1800 and the interest he was paying on the loans at this time, and at this time Mr. Dinino threatened him in connection with not only gambling debts

that he owed, but the loans as well.

THE COURT: Well, you ask him what he did, let's suppose he goes to Gambler's Anonymous or goes around and does things that have no connection with Dinino, why is that relevant? Shouldn't we stick to his transactions with Dinino?

MR. ABZUG: Yes, I think it is merely a transitory device, your Honor. He had a meeting with somebody in Gambler's Anonymous.

THE COURT: I don't think we need to get into that, do we?

MR. ABZUG: It just makes his later actions more comprehensible.

THE COURT: We don't need that. Now, defense counsel, what is your feeling on whether a gambling debt is within the statute? Have you looked that up?

MR. BLOUSTEIN: I never contemplated that it was, but I didn't read the statute at the time I did with that in mind.

MR. WALLACH: Your Honor, I don't want to paraphrase the Supreme Court, Judge, but they did say up there at the last resort we look at the statute. I think the statute does speak about gambling or other debts. I don't have the statute in front of me.

THE COURT: We'll cover that. All right.

MR. WALLACH: Your Honor, when they are finished with direct can we have a short recess? We just got the Jenks material and some of it is illegible.

THE COURT: All right. Sure, you can.

[In open court:]

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes.

BY MR. ABZUG:

Q Following the last conversation that you had with Mr. Dinino in which you discussed the $1800 gambling debt -- incidentally, in that conversation did you discuss your loans as well, sir?

A I don't follow you.

Q In other words, the last conversation that you had with Mr. Dinino where you testified that he demanded the repayment of the $1,800, did you discuss your loans with him as well in that conversation?

A No.

Q All right.

Now, following that conversation did you have another meeting with Mr. Dinino?

A Yes.

Q Where was that, sir?

A Again, outside of Al's Taxi.

Q How soon after the last meeting that you testified to?

A The following time he came. Probably on a Wednesday. Immediately after. Two days after.

Q And what did you say --

THE COURT: Excuse me. Could you just hold your places?

All right, go ahead.

MR. ABZUG: Thank you, your Honor.

Q What did you say to him and what did he say to you?

A I told him that I had spoken to someone who he had knew and that they would -- either had contacted him by then or would contact him that I couldn't pay him the $1,800, that I had lied to him about stalling him and that I just couldn't meet the other payments I had also, and I proposed that I take -- proposed that I pay him a lump sum figure each week and pay him that to pay off the two loans plus the $1,800.

Q When you say the other payments, sir, payments on what?

A On my two loans.

Q What figure did you propose, sir?

A I proposed $25 a week.

Q What, if anything, did Mr. Dinino respond?

A He told me I was crazy and that if I paid him $25 a week I would be paying him for two or three years and that it was out of the question. Not to even think about it. That he wouldn't even discuss it with me.

THE COURT: I'm sorry to interrupt, but in this conversation did you say that you revealed the Levine situation?

THE WITNESS: No, I didn't in this conversation. I confessed to him, I told him I couldn't pay him the $1,800 at all and I couldn't continue paying him the money on my two loans and that I asked him to consolidate the gambling debt and the two other loans all in one, and that I would pay him $25 a week until the whole debt was paid off.

Q And he responded what, sir?

A He didn't even want to know about it, that I was crazy or out of my mind, and he didn't even want to discuss it and I had better come up with a better figure, more like $100 a week.

Q How did this conversation make you feel, sir?

MR. BLOUSTEIN: I object to that.

MR. WALLACH: Objection.

THE COURT: Yes, sustained.

Q Following that conversation did you have another meeting with Mr. Dinino?

A Yes.

Q Where, sir?

A In front of Carter Cab Company.

Q How soon afterwards?

A On Friday night. I spoke to him on a Wednesday, and the next conversation was on Friday.

THE COURT: In other words, the conversation you were just telling us about was on a Wednesday.

THE WITNESS: Right.

THE COURT: All right, go ahead. On Friday another conversation.

Q Where is Carter Cab located, sir?

A It's in the Bronx on Mosholu Avenue. It's five blocks north of Al's Taxi.

Q Where did you have this conversation?

THE COURT: Carter Cab?

THE WITNESS: Carter Cab, yes, C-a-r-t-e-r.

Q Where did you have this conversation, sir?

A In Mr. Dinino's car.

Q Was anybody else present?

A No.

Q What was said, sir?

A Well, Mr. Dinino was sitting in his car and I got into his car and I told him that I'm sure by now he had spoken to my friend in Gambler's Anonymous and that I wanted him to know again that I had been going back to Gambler's Anonymous and it's impossible for me to pay him the $1,800, plus continue paying the loans that I had and that I wanted him to know also at this time that the $500 loan that he had thought he had lent to Ronnie Levine had instead been mine and I had been making the payments on it, and when I did make a package settlement with him for whatever amount we decided on that had to be part of the package.

In other words, that Ronnie Levine loan would be encompassed in my loans, and Ronnie Levine wouldn't have to be worried about having to pay off a loan that he never really in fact took.

Q What did Mr. Dinino respond?

A He got very angry and he told me that he don't give a damn what the man in "G.A." proposed to him, and no matter what happens he won't even think of allowing Ronnie Levine to get out of his loan or for me to encompass it in mine. He told me he had given Ronnie Levine the money in his hands, and once he put it in his hands it was

his responsibility and that no matter what happened as far as we were concerned with my particular two loans and gambling debt he wouldn't accept that agreement.

Q What happened after that?

A He told me to get out of the car and go back down to Al's Taxi and he would be down there shortly and talk to Ronnie Levine about it.

Q Did you see him again?

A Yes.

Q When, sir?

A About fifteen minutes later.

Q Where, sir?

A At Al's Taxi.

Q What did you observe?

A Well, he pulled up in his car and he got out of his car and approached Ronnie Levine who was standing in front of Al's Taxi in the street, and he had a conversation with him which lasted about a minute, and Ronnie Levine came running into the office and came over to me --

THE COURT: Wait a minute. I don't want to have what Levine said that Dinino said. Just stick to what Dinino said.

THE WITNESS: Well, Dinino at that time said nothing to me. He said something to Ronnie Levine in

the street. I was inside.

THE COURT: All right.

THE WITNESS: And then Ronnie Levine came in and said something --

THE COURT: All right, we won't get into that.

THE WITNESS: Because of Ronnie Levine coming in to me and saying something to me I went outside to Dinino.

THE COURT: All right.

THE WITNESS: And from what Ronnie Levine had said to me I went outside to Dinino and said certain things to him.

Q What did you say to Mr. Dinino?

A Well, I told him that I had explained to him up at Carter's and I am telling him again that no matter what he says or does, what I had told him is going to be what's going to happen. Again, that Ronnie Levine's loan was part of my loan and that I was responsible for it and therefore since Ronnie Levine had never taken the money for himself, or used the money, that Mr. Dinino would have to accept my terms, and if he didn't accept my terms I wouldn't give him anything.

Q What did Mr. Dinino say?

A He told me he didn't even want to talk with me

about it, he didn't want to hear any more, and I told him if he wants to hear it or not that's the way it's going to be, and I told him if he doesn't like it I won't pay him, and he told me, for two cents I'll bust your balls right here.

Q What did you then do?

A I told him, go ahead, if that's what you're going to do. And we argued back and forth for a minute or two and nothing came of it, and he drove off and I went back inside.

Q Now, after this conversation with Mr. Dinino did you have another meeting with him?

A Yes.

Q When, sir?

A Monday or Wednesday night of the following week.

Q Where was this meeting?

A At Al's Taxi.

Q Did you have a conversation with Mr. Dinino?

A Yes.

Q What did he say to you and what did you say to him?

A I agreed to pay him $100 a month -- a week for the year on the agreement on his part that all the loans including Ronnie Levine's loan would be mine and

the gambling debt. In other words, I agreed to give him $100 a week for one year and that would wipe out all my indebtedness to him.

Q Why did you agree to pay $100 a week to Mr. Dinino when you originally only proposed to pay him $25 a week?

A Well, I was involved, and as I said, I was returning to Gambler's Anonymous at the time and I was told by them to --

THE COURT: Now look, I am not going to receive evidence about what he was told by Gambler's Anonymous or anything else, transactions that transpired outside of the presence and were not involving Dinino.

MR. ABZUG: I understand that, your Honor.

THE COURT: Now let's stick to what transpired between Mr. Jackson, Mr. Dinino and Mr. DeVito, whatever that is.

MR. ABZUG: Let me rephrase the question then, your Honor.

Q What, if anything, did Mr. Dinino do that made you agree to pay $100 to him rather than the $25 that you originally proposed?

A Well, besides threatening to bust my balls on Friday the fact that I had owed him money through the

borrowing of the money through the loans and the fact that I had owed him money through the bookmaking operation, and he explained to me that they were two different offices, I was doubly frightened because I was afraid that either one of his offices that he had worked out of might come down and threaten me or do any damage, bodily damage to me.

Q All right. Now, how long did you continue making the -- did you make any $100 payments to Mr. Dinino?

A Yes.

Q How long, sir?

A About three months. About twelve or thirteen hundred dollars which would be about three months.

Q And when would you make these payments ?

A Every Friday.

Q Where, sir?

A At Al's Taxi.

Q Did you make the payments to anyone else, sir?

A On occasion.

Q Who, sir?

A To Mr. DeVito.

Q What happened, if anything, after three or four months of paying him $100 a week?

MR.WALLACH: Who is "him", Judge?

THE COURT: He just said either DeVito or Dinino. That's perfectly plain. And this went on for --

THE WITNESS: Three months.

THE COURT: All right.

Q What happened, sir?

A What happened when?

THE COURT: After the three months.

A After the three months I went to Mr. Dinino and I told him that it was impossible for me to meet this new obligation that I had of $100 a month -- a week. I couldn't afford it. I couldn't -- I had by that time problems with my car. I had a lot of other financial burdens, and I couldn't afford to pay him $100 a week or $50 a week or $25 a week, and I told him the most I could pay him is $10 a week and I would pay him $10 a week for as long as it took for me to clear up his loan.

Q What did Mr. Dinino say to that?

A He accepted it.

Q Did you make $10 payments subsequently?

A Yes.

Q To whom, sir?

A To Mr. Dinino or Mr.DeVito, or, on occasion someone else.

Q When would you make these payments, sir?

A Every Friday.

Q Where, sir?

A At Al's Taxi.

Q Until what time, sir?

A Until the summer of '73.

Q Now, during this period that you spoke about until the summer of 1973 did you see Mr. DeVito meet with any other individuals at Al's Taxi?

A Did I see who?

Q Mr. DeVito meet with any other individuals at Al's Taxi.

A Yes.

Q When did you see this, sir?

A During the course of the period on a Monday, a Wednesday or a Friday.

Q Who were some of the people that you saw him meet with?

A Sid Shalkin, Tommie Brando. These were the only two by that time.

Q What, if anything, did you observe when he would meet these two individuals?

A Well, I observed him getting paid from them.

Q You indicated that you paid another person besides Mr. Dinino and Mr. DeVito during this time

period. Who was that, sir?

A His name was Louis.

Q How did you come to meet Louis?

A Well, one particular evening Mr. DeVito --

Q Excuse me. Approximately when did this happen?

A In mid-'72.

Would you describe what happened?

A Mr. DeVito came into Al's Taxi on either a Monday, Wednesday or Friday night, or late in the afternoon and he came over to me and whoever else was in the room at the time and told us that for the next three or four weeks this fellow Louis would be coming around and collecting instead of him, and that we should pay him the same way we paid he or Mr. Dinino.

THE COURT: You said this was Dinino or DeVito?

THE WITNESS: DeVito.

Q Who was present at this time?

A I was present there. I don't recall.

Q Besides yourself.

A There were some other drivers in the room. I am not sure at the time he walked in who was there.

Q Subsequent to this time did you see Louis again?

A Yes.

Q Where did you see him, sir?

A At Al's Taxi.

Q How many times, sir?

A He came in for about a three-week period, which means I would have seen him about nine or ten times.

Q What, if anything, transpired when you would see this fellow Louis?

A Well, he'd come in the same way and wait for different drivers to collect from them. And on Friday he would come over to me and collect from me.

Q Did there come a time when you had a conversation with Louis?

A Yes.

Q When was that, sir?

A Well, it probably was, I would say in the middle of the second week or the end of the second week.

Q Where was this conversation?

A At Al's Taxi.

Q Who was there, sir?

A I was there alone.

Q What happened?

A This fellow Louis walked in, he walked in quite early, about two o'clock in the afternoon, which was very unusual. And I asked him why he was there at that

time. And he told me that he had been trying to collect from Sid Shalkin for approximately a week and he could never get him in, and he was making it his business that he would get him in today. He was tired of coming back looking for Sid Shalkin.

MR. BLOUSTEIN: I object to this, your Honor. It's hearsay. Not conversation within the presence of the defendant, either defendant here.

MR. ABZUG: Your Honor, it is clear the conversation --

THE COURT: Please. Overruled.

Q Continue your recitation of your conversation with Louis.

A As I said, he was there early and he told me that he was -- came early specifically to see Sid Shalkin and he was going to wait and make sure he would see him before six o'clock. And I asked him why he had to act so rough and tough, and this wasn't the roaring twenties, and why did he have to walk around as if he was a real tough guy, and that if Sid Shalkin didn't pay him the money why, he didn't have to imply or say that he would do anything to him. And at that time he walked up to me and took a revolver out of his pants and put it right to my chest and said, for two cents I'll blow your fucken

brains out.

Q What did you do after that?

A I was very frightened and I didn't say anything, and he calmly took the revolver back and put it away.

Q Did you subsequently see Mr. Shalkin around at Al's Taxi after that?

A Yes.

Q What happened?

A Louis walked outside with him.

Q Did you overhear their conversation?

A No.

Q Now following that conversation did you continue to make payments?

A Yes.

Q In what amounts, sir?

A By that time I was making $10 payments.

Q To whom, sir?

A To Mr. Dinino or Mr. DeVito.

Q When, sir?

A Every day.

Q Until approximately what time, sir?

A What period of time?

Q When did you stop making these payments?

A In the late summer of 1973.

Q Would you tell the Court and the jury what actions Mr. DeVito did to make you pay the $10 to him?

MR. WALLACH: Objection, your Honor. I object to the form of that question. It is leading.

THE COURT: Yes. What actions did Mr. DeVito take, or what did he say, but not -- all we have to get is what happened. Everything that happened. Everything that DeVito did, Dinino did or Louis did.

MR. ABZUG: I understand that, your Honor. I am merely trying to suggest to the jury the witness' state of mind.

MR. WALLACH: I object to that.

10 MR. BLOUSTEIN: That is exactly what we object to, your Honor.

THE COURT: That's right. I don't think you have any right to suggest that. I don't think you mean you are trying to personally suggest anything to the jury. That isn't what you mean. You are trying to bring out evidence of something that you think is relevant. I don't think it is relevant, and I want to limit the proof to what this witness observed as to the actions and speech of these defendants or anyone that he, for instance, Louis, he testified about Louis having been sent by DeVito, so that is the reason I am letting the testimony in about

Louis.

Let's limit it, do you understand that?

THE WITNESS: Yes.

THE COURT: Okay.

MR. ABZUG: Very well, your Honor. In that event, I have no further questions of this witness.

THE COURT: All right. We will take a short recess.

[Recess.]

THE COURT: All right, Mr. Bloustein.

MR. BLOUSTEIN: If your Honor please, I was given a considerable amount of Jenks material. I couldn't get through all of it during the recess. Could I be permitted to start my cross-examination and see how far I get?

THE COURT: You do the best you can.

MR. BLOUSTEIN: Thank you.

***

CROSS-EXAMINATION

BY MR. BLOUSTEIN:

Q Mr. Jackson, how old are you?

A 45.

Q Are you married?

A No.

Q Were you ever married?

A Yes.

Q Do you have a family?

A Yes.

Q Children?

A Yes.

Q How many?

A Three.

Q When did you learn that you were a compulsive gambler?

A I became aware of it a long time ago. I admitted it to myself in about 1968.

Q So that the defendants in this case had nothing to do with your becoming a compulsive gambler?

A True.

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Overruled.

Q Were you in the Service?

A Yes.

Q Were you a gambler then?

A In a minor way. I gambled in the Service, yes.

Q Did you take loans from people privately, not going to institutions, prior to the time you met Mr. Dinino?

A Yes.

Q That experience as you detailed for us was not new with Mr. Dinino?

A I don't know what you mean now. I borrowed money from other people all my life.

Q All your life.

A Well, my adult life, yes.

Q Were you aware of the meaning of the word "Vigorish" prior to the time you met Mr. Dinino?

THE COURT: The meaning of the word what?

MR. BLOUSTEIN: Vigorish.

THE COURT: How do you spell it?

MR. BLOUSTEIN: I think it's -- your Honor, I think it's v-i-g-o-r-i-s-h.

A Yes.

Q Would you explain to his Honor and the jury what vigorish means.

A Well, as I explained to the jury before, when you borrow money from somebody, for example in terms of $100, if you borrow $100 and you are asked to pay back $120 in a certain amount of time you are making payments more than the 100. If you don't -- if I agreed, for example, to borrow $100 and pay back $120 in six weeks or $20 a week at any one of those given weeks, if I didn't

have the $20 to pay I was permitted to pay vigorish, or $6 for every $100.

So that if I borrowed $100 today, next Monday was my first payment of $20, if I couldn't make my payment next Monday of $20 I was allowed to pay $6 and I would still owe $120.

The vigorish was to replace the $20 and leave the $20 still there as a payment the following week.

Q In other words, if I understand you correctly, Mr. Jackson, vigorish is interest payments without affecting the principal.

A Right.

Q So that you paid the vigorish, the interest and the principal remained unpaid.

A No, not exactly. If I borrowed $100 the principal automatically became $120, not $100. So I was -- I had to pay back the principal of $100 plus interest of $20 plus the vigorish.

Q I stand corrected. Right. And this is the procedure you followed all your life, all your adult life?

A No, not true.

Q Well, didn't you tell us that you borrowed from private people --

A Many times.

Q Many times.

A Many times. Relatives, friends, my parents. They didn't charge me interest or vigorish.

Q Did you borrow from strangers other than Mr. Dinino?

A Yes.

Q Did you have to pay vigorish there?

A Once.

Q Prior to Mr. --

A Yes.

Q So that this system of borrowing you were familiar with, were you not?

A Yes.

Q This wasn't something new that Mr. Dinino made up for you?

A No.

Q Would you tell us, and try to fix the date as accurately as possible, the date that you met John Dinino?

A I can't fix the date any better than it was sometime in the -- when you say met him, to speak to personally? I met him, I saw him many times during the year of 1970. I didn't actually speak to him and approach him until the late part of 1970.

Q What month?

A I couldn't tell you what month. I would say it was in the -- sometime after September. Between September and December. I couldn't get it any closer than that.

Q When money was loaned to you which you gambled with, did you keep --

MR. ABZUG: Objection. That was not the testimony of the witness, your Honor.

Q Well, what did you need this money for that you borrowed from Mr. Dinino?

A To gamble with.

Q When money was loaned to you for the purposes of gambling did you keep records of the borrowings that you had and the repayments you made?

A No.

Q Well, how did you keep track of what payments you made?

A It wasn't that complicated an arrangement. I knew in my head what I borrowed and what I owed and what I had to pay.

Q Well, obviously it is complicated, because you can't remember the dates; is that correct?

A That's not true.

MR. ABZUG: Objection.

THE COURT: Sustained.

Q Could you tell us on what dates you made any of the borrowings that you described?

A On what day or night?

Q Dates.

A Date? No.

Q Or could you tell us on what dates you repaid any of the monies that allegedly were loaned to you?

A No, I couldn't give you the exact date.

Q All you know is within the framework of a year or a month that certain things happened.

MR. ABZUG: Objection.

THE COURT: Overruled.

A Do you want to repeat that?

Q I say that all that you know is that during the framework of a particular month, thereabouts, certain things happened in the way of your getting money or giving back money.

A That's basically true.

Q Who owns the car that you drive?

A Who owns it or who owned it?

Q Who owned it at the time that all this --

A At the time that I drove I owned the car. It was my own car.

Q Did you own it outright?

A Yes. What do you mean outright? You mean did I borrow one? Did I --

Q Right.

A No, I had a car that I had made a loan from a company and they loaned me the money and I paid for the car.

Q And you bought the car?

A That's right.

Q And eventually you paid off whatever monies --

A That's right.

Q If you needed money, Mr. Jackson, why didn't you go and borrow on the car?

A If I needed money why didn't I borrow on the car?

Q Why did you not take a loan on your car?

A I'll tell you why --

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Overruled.

A My car, when I bought my car, I didn't pay for it. I owed money on the car. I was making payments. And therefore it wasn't my car to go and make a loan on.

Q Well, when did you buy the car?

A In 19 --

THE COURT: By the time of these transactions that you testified to --

THE WITNESS: No, I was paying yet for the car.

THE COURT: You were still paying a loan on the car?

THE WITNESS: Yes. I had bought the car, my wife had worked for IBM and through IBM my wife was able to take a loan out and IBM lent me the money.

THE COURT: We don't need all this.

THE WITNESS: All right. I'm just explaining. I owed money on the car and I couldn't sell the car.

Q You testified that John Dinino made it a practice to be in Al's Garage --

A Al's Taxi Service.

Q [continuing] -- on particular dates.

A That's right.

Q What days?

A Mondays, Wednesdays and Fridays.

Q And what hours?

A Between 4:30 and 6.

Q Were you working between 4:30 and 6?

A Yes.

Q And if you were working your work would take you outside the garage?

A It wasn't a garage, it was a taxi stand, and my work would take me out and in. I would go out and I would come back and sit there.

Q So that many times when he came there you would not be there?

A That's true.

Q And you didn't keep a record of what days you were there or what days you were not there?

A That's true.

Q So that when you say he was there every Monday, Wednesday and Friday --

A Right.

Q [continuing] -- you're talking only of those days that you were also there.

A You mean that I personally saw him?

Q Right.

A Right. If I wasn't there and didn't see him the only other way I would have known is from somebody telling me that he was there. I only could know he was there if I saw him.

Q Right.

A And you're right, there were times when I wasn't there.

Q You came and went depending upon the calls that you got?

A True.

Q In the year 1970 for the balance of the year

from the time you met John Dinino until the end of the year --

A Yes.

Q [continuing] --did he to your recollection ever miss a date, a week that you didn't see him?

THE COURT: Let me hear the question again.

MR. BLOUSTEIN: Let me rephrase it, your Honor. I recognize it may be a little awkward.

Q In the year 1970 from the time you met him until the end of the year --

A When you say met him, when I met him to do business with him?

Q Right.

A Okay.

Q Did John Dinino fail to appear at Al's stand any one particular week?

A I would say certainly Christmas. I said I would say certainly he didn't appear the week of Christmas. And it's possible that there might have been a week that he didn't appear. To my recollection he did appear. But I know that, I'm almost positive that he wouldn't have appeared the week of Christmas.

Q Outside of Christmas week --

A Yes.

Q [continuing] And does that take in the seven days of Christmas?

A Yes. Christmas and New Year's .

Q Outside of Christmas is it your testimony that he appeared every single week in the year 1970?

A No, I won't -- you asked me, first we're not discussing the year 1970, we're discussing the Fall of 1970.

Q Right. You're right.

MR. ABZUG: Your Honor, I move that the witness' response be stricken as unresponsive.

MR. BLOUSTEIN: The witness happens to be right.

THE COURT: Motion denied. Please.

MR. BLOUSTEIN: The witness happens to be right.

THE WITNESS: I understand now as long as you understand. To the best of my recollection from September of 1970 through New Year's of 1970 I saw Mr. Dinino if not every week, almost every week. I can't swear that I saw him every single week with my own eyes. I know most certainly that I paid somebody every single week.

BY MR. BLOUSTEIN:

Q Well, in the year 1970, Mr. Jackson, were you introduced to DeVito?

A I don't think so. I think it was the early part of '71.

Q Now coming back to 1970 did you pay to anybody other than Dinino in the year 1970?

A I don't think so.

Q There is no question that Dinino was the only one you met up to the end of 1970?

A What do you mean the only one that I met?

Q The only one you met that collected money from you.

MR.ABZUG: Objection. Your Honor, the witness has testified to the best of his recollection and counsel is restating his question.

THE COURT: No, no. I just guess we are getting in my view a little repetitious. I don't want to cut you off, Mr. Bloustein, but it seems to me we are kind of going around --

MR. BLOUSTEIN: I just want to get the best answer he has.

THE COURT: All right, go ahead.

THE WITNESS: My best answer is that during the last three or four months of 1970 I don't think I paid anybody else but Mr. Dinino, and as I said before, it's possible that there was a week or two that I didn't see

Mr. Dinino, but to the best of my recollection he was the only one I had any business dealings with in Al's Taxi regarding money at that time.

Q Now, in 1970 tell us what your best recollection is as to the number of times you paid Mr. Dinino money.

THE COURT: He is going to have to sit here and calculate; right?

MR. BLOUSTEIN: No. If he knows.

THE COURT: What does it add? He said he paid him every week, he thinks it was somewhere between September and December he made the first loan and he paid him every week.

MR. BLOUSTEIN: If he knows how many times I would like to know the number of times.

THE COURT: All right, but let's not have the same thing said five different ways.

Do you have any memory?

THE WITNESS: Well, if it was four months -- If it was --

THE COURT: If it was four months he will calculate it. Nobody sits down and remembers, I paid five times in 1970 and twenty times in 1971. Nobody's mind works that way.

Let's go.

BY MR. BLOUSTEIN:

Q In 1970 did you see Mr. Dinino come to Al's stand in a car, in an automobile?

A Yes.

Q What kind of car did you see him arrive in?

A To the best of my recollection Mr. Dinino at that time came in more than one type of car. On different occasions he came in different type cars. I couldn't pin down the car because I recall him coming in different, possibly three or four different type cars or different cars. Different makes of cars.

Q In different colors, I take it?

A I assume so, I don't remember.

Q Now, you testified, Mr. Jackson, that he came in a Cadillac car, did you not?

A I testified I think that in 1971 when I met him at Carter's and when he came subsequently to Al's Taxi he came in a Cadillac car. That was my memory, yes.

Q That was the way you testified originally; is it?

MR. ABZUG: Objection.

THE COURT: You ask questions, Mr. Bloustein --

MR. BLOUSTEIN: Yes, I will.

THE COURT: You can't argue. The jury remembers

the testimony.

Q Isn't it a fact that earlier you told the jury that when you first met Mr. Dinino and took a loan from him he came in a Cadillac car?

A I don't remember if that's what I told the jury.

Q But if that's what you said you were not sure?

A I can't be sure during the year 1970 what make or kind of car Mr. Dinino came in or rode.

Q Now, in 1970 did you witness Mr. Dinino having any transactions with other people at your stand?

A Yes.

THE COURT: Is there really a reason why we repeat the direct? Just go over exactly the same questions? These are exactly the same questions asked on direct. Now, like with the Cadillac car you say you got a different answer, but I really wonder why we have to repeat the direct.

MR. BLOUSTEIN: Well, your Honor, I hope to show that some of the testimony given here is not accurate, and while it is not accurate he may be wrong on other points, too.

THE COURT: Can you focus it a little better so we can get that out?

Q Who were the other people that you saw Dinino

transact money transactions with?

A When?

Q In 1970.

A Tommy Brando, Sandy Ronson, Louis Materasso, Sid Shalkin.

Q Now, were those transactions performed in your presence?

A Yes.

Q And you heard everything said by both sides?

A No. I saw money exchanged, I didn't hear the conversation.

Q But you knew nothing of the nature of the transaction?

A I knew of them from what I was told by the people.

Q Other than that you didn't know anything about it?

A Other than what I was told? No.

Q Now, how long did it take from your first borrowings until the last repayment that these transactions continued?

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Overruled.

A Let me see if I understand the question. You

want to know from the first time I borrowed money the length of time from the first time I borrowed to the last time I made a payment?

Q Right.

A I would say from the Fall of 1970 till the summer of 1973.

Q In the summer of 1973 were you all paid up?

A No.

Q How much did you owe?

A Well, I'll tell you, there is no way of telling because in 1973 -- in 1972 when I finally agreed with Mr. Dinino to pay him $10 a week the amount was -- the length of time that it would have taken me to pay him the money that I owed him would have taken a number of years. It would have taken three or four years.

Q I again ask you how much money did you owe, what balance did you owe to the best of your recollection at the time you made your last payment to him?

A It would be a guess. I'll take a guess. About -- I'll give it to you in a second. I'd say somewhere close to $1,000.

Q What would be your best approximation of the amount of money, the total amount of money that Mr. Dinino paid out to you?

A Well, he gave me $500 on one occasion. He gave Ronnie Levine $500 which I used on another occasion. And he gave me originally $200 on the other loan, which was increased to 500 on an another occasion. So we're discussing $1500.

Q You never did pay back all that was required of you?

A I never paid back what?

Q You never paid Mr. Dinino the outstanding so-called balance?

A If I did I wouldn't be paying him $10 a week.

Q Right. But in period from the Fall of 1970 to the summer of 1973 was there any physical harm that befell you?

A No.

Q He never hurt you, did he?

A Hurt me?

Q Yes.

A I just said I never had any physical harm, so he didn't hurt me.

Q You sought him out, he didn't seek you out, did he ?

A That's true.

THE COURT: This is repeating. Have you

anything else?

MR. BLOUSTEIN: Yes, I do.

THE COURT: Well, let's go on, please.

MR. BLOUSTEIN: Your Honor, may I consult with my notes for one minute?

THE COURT: All right.

Q Now, this man Louis that you testified about, did you tell the FBI agent who investigated this case about him?

MR. ABZUG: Objection.

THE COURT: Overruled.

A I told him everything that I testified to here, yes.

Q And did you tell him his last name?

A I didn't know then, I still don't know his last name.

Q Did you give him a physical description?

A Yes.

Q Tell us the description, please.

A He was short and stocky, had black hair and he was about in his late thirties or early forties I would have said.

Q How many times did you see him?

A Eight or ten.

Q And during the period of time you saw this Louis were you also seeing Dinino?

A No.

Q What year did you meet Louis?

A '72.

Q Could you fix the approximate month?

A It would be very difficult, because I said I only saw him eight times. It would be sometime, it would be a guess, it was in '72, but it's very difficult -- I would say that it was, I would say that it was -- it wasn't in the winter, because I recall an occasion he came in at two o'clock in the afternoon, I recall the weather, and it was a warm day. So I would say it probably would be closer to the beginning of '72 than the end of '72.

Q Were you prompted to go to go the police and tell the police about this incident?

A No.

Q You weren't that much afraid, were you?

A I was --

MR. ABZUG: Objection.

THE COURT: Overruled.

A I was afraid and I told other people.

Q But you didn't go to any law enforcement agencies?

A No.

Q When for the first time did you meet DeVito?

A In the early part of '71. Either very, very late in '70 or the early part of '71.

Q How many times would you approximate you saw DeVito?

A Over the two or three years?

Q Yes.

A Over fifty. Between fifty and a hundred times.

Q And on the weeks that you saw DeVito did you also see Dinino?

A No.

Q In other words, Louis, DeVito would only come when Dinino did not come; is that correct?

A Almost every time. There might have been one or two occasions over the three years when they both were there together, but very, very seldom.

Q Did there come a time where anybody else came for collection of money?

A You mean for those two men?

Q Yes.

A Yes.

Q Who?

A I don't know his name. I don't remember. I think his name was Tony.

Q Did Tony collect money from you?

A Yes.

Q How was Tony introduced to you?

A He came down to Al's Taxi, I'm not sure if he was alone, I think he was alone, and introduced himself to me and other people saying that he was going to take over the collections for John and Vinnie.

Q And with nothing more you paid Tony money?

A That's right.

Q In other words, you didn't check back with John Dinino?

A No.

Q To find out whether he was authorized?

A No.

Q Did you check back to John Dinino to find out if Tony was authorized?

A I told you that Vinnie had brought in --

Q Well, you say Vinnie, Vinnie who?

A Mr. DeVito brought in Louis and told me and other people that he wouldn't be around for a while and I and other people should pay Louis. So I paid Louis.

Q And DeVito introduced you to Louis?

A That's right.

Q But nobody introduced you to Tony?

A I don't remember. I don't think so.

Q You testified to hearing an expression that he'd bust your balls.

A Yes.

Q Who told you that?

A Mr. Dinino.

Q That's not the first time you heard that expression, is it?

A No.

Q That's a man's colloquial expression, is it not?

A Yes.

MR. ABZUG: Objection.

THE COURT: Overruled.

A Yes.

Q You heard that expression in the Army, didn't you?

A Yes.

Q You used it yourself, didn't you, on occasion?

A Not to tell somebody else, but using it as an expression, yes.

Q When people say busting balls they don't mean any physical part of the body is busted, do they?

MR. ABZUG: Objection as to what people say. How can the witness know?

THE COURT: I will sustain the objection to that.

Q In other words, Mr. Jackson, when --

THE COURT: We don't have to have in other words. Let's not keep saying the same thing in different words. If you have got a new point to make, please make it.

Q Now, you testified that there came a time when you realized that your payments of $100 a week were not feasible; is that correct?

A Were not feasible?

Q Yes. You couldn't make it.

A Right.

Q And you had a meeting with Mr. Dinino to --

A Try to lower them.

Q [continuing] -- ask that they be lowered. And is that the meeting that you related took place in the automobile?

A No.

Q Where did that --

A The one in the automobile was the last meeting I had.

Q Prior to the one in the automobile when you tried to renegotiate the weekly amount, where did that meeting take place?

A In front of Al's Car Service.

Q Did Dinino listen to you?

A Yes.

Q Was he sympathetic to your view?

A What do you mean, was he sympathetic?

Q Well, did he agree to accept a lesser amount?

A I told you -- no -- I told you that I lost the money and I told him it would take two weeks for me to pay him. That was the first meeting with him. And the second meeting with him when I was supposed to pay him in two weeks I didn't have the money.

THE COURT: I think we are getting off. Aren't you referring to the meeting where it was agreed to reduce it to $10 a week?

MR. BLOUSTEIN: Yes.

THE COURT: Do you recall that?

A Is that what you are referring to?

THE COURT: Yes.

Q That's what I'm referring to.

A When he agreed to reduce it to $10?

Q Yes.

THE COURT: All right. What is your question?

Q When did that meeting take place?

A That happened about the middle of 1972. In

other words, three months after we had agreed that I'd --

THE COURT: He just asked you when.

THE WITNESS: Okay. I'm sorry.

THE COURT: All right.

Q Mr. Dinino accepted that as your future payments, $10 a week?

A Yes.

THE COURT: You say that was when? I'm sorry.

THE WITNESS: In the middle of '72.

THE COURT: All right.

Q He didn't physically hurt you at that time?

A No.

Q He didn't threaten you?

A No.

MR. BLOUSTEIN: Will your Honor bear with me? I would like to confer with my client for just a minute.

THE COURT: Surely.

Q Mr. Jackson, are you the witness who came to the authorities here to complain about this case?

MR. ABZUG: Objection.

THE COURT: Overruled.

A Am I the witness that came to complain?

Q Yes.

A No.

Q In other words, you were called by the Government to appear here not on your own accord? You were subpoenaed?

A I was subpoenaed, yes.

Q And the testimony you gave was testimony that you didn't voluntarily give without the subpoena?

MR. ABZUG: Objection.

THE COURT: He is subpoenaed. Now really. I don't know what that question would mean.

Anything else?

MR. BLOUSTEIN: I have nothing further at this time, your Honor, but again I would like a chance to read all the Jenks material.

THE COURT: All right.

Mr. Peluso.

Why don't you try to go through that other material right now, Mr. Bloustein? I want to finish with this witness.

MR. BLOUSTEIN: I am, your Honor.

***

CROSS-EXAMINATION

BY MR. PELUSO:

Q Good afternoon, Mr. Jackson.

A Hello.

Q Mr. Jackson, before taking the stand here today

did you discuss your testimony with the U. S. Attorney?

A Yes.

Q Can you tell us on how many occasions you discussed what you have testified to here today with the U. S. Attorney?

A Twice.

Q Can you tell us when was the first time you discussed it?

A The first time? Wednesday. The day before Thanksgiving.

Q Did you discuss it with any other Assistant U. S. Attorney?

A No.

Q Did you on any prior occasion discuss your testimony with anyone in this building?

A No, except when I was called two years ago to the Grand Jury, that's all.

Q On that occasion before going into the Grand Jury did you discuss your testimony with anyone?

A I think the morning I went to the Grand Jury, fifteen minutes before I went to the Grand Jury room, there was a Mr. Padget who was in charge at that time, and if there was a discussion it lasted a minute or two. Other than that, nobody.

Q Before you spoke to Mr. Padget on that occasion approximately two years ago had you talked to anyone else, any members of the Government, prior to that occasion?

A Yes.

Q With whom did you speak?

A FBI agents.

Q On how many occasions?

A Four or five at the most.

Q Do you remember the names of the agents that you spoke to on those four or five occasions?

A Yes.

Q Can you tell us who they are?

A One man's name was Raleigh.

Q Raleigh?

A Raleigh. Ray Raleigh. And the other name was Potkonjak. I don't remember his first name.

Q Anyone else?

A No.

Q And you spoke to Mr. Raleigh on how many occasions?

A I just told you, four or five. I don't recall.

Q And Mr. Potkinjak?

A They were always together.

Q I see.

Do you remember the first occasion that you spoke to these people?

A Yes.

Q When was that?

A They came to my home.

Q When was that?

A In the summer of '73.

Q Were you under investigation at that time?

A Me?

Q Yes.

A No.

Q Have you ever been convicted of a crime?

A No.

Q When you appeared before the Grand Jury were you advised that you had a right to remain silent?

MR. ABZUG: Objection.

MR. PELUSO: May I finish the question, Judge?

THE COURT: Well, I would sustain the objection.

MR. PELUSO: I will go on to another area, Judge.

THE COURT: All right.

Q When you first met Mr. Dinino, when was that?

A In the late part of 1970.

Q You sure of that?

A When you say when I met him, I said that I worked there during the year 1970 and I saw him throughout the year. But my recollection is that I spoke to him about myself in the late part of 1970.

Q Were you married at that time?

A Yes.

Q Are you married today?

A No.

Q Are you divorced?

A Yes.

Q When did the divorce take place?

A A year ago.

Q In late 1970 or early 1971 was Mr. Dinino the only person that you were borrowing money from?

A No.

Q How many people were you borrowing money from at that time?

A How many people was I borrowing from, or how many people did I owe? I wasn't borrowing from anybody. I owed the people.

Q Well, did you borrow from your relatives?

A Not at that -- no, not then. I borrowed from relatives, you talking about a specific period of time.

Q Between late 1970 --

A Right.

Q [continuing] -- and '73 when the agent first came to your house.

A Yes.

Q You were borrowing money from people other than Mr. Dinino; is that right?

A That's a new question. Yes.

Q How many people were you borrowing money from?

A About three.

Q During that period of time, late 1970 and '73, approximately how much money did you owe out?

A At one time or for the whole three years? I don't --

Q During that entire three-year period.

THE COURT: What is this, a sum total? You know, if you want a balance at a given point let's specify the point.

MR. PELUSO: I will withdraw the question.

THE COURT: All right.

MR. PELUSO: I will try to make it simpler.

Q What were your weekly payments between late 1970 and '73 to different people to whom you owed money?

MR. ABZUG: Objection.

THE COURT: Sustained.

Q How much were you earning that time, sir?

MR. ABZUG: Objection. What time?

THE COURT: I'll tell you --

MR. PELUSO: Between late --

THE COURT: I assume that things may change, and so either confine it to a reasonably short period of time or establish that things didn't change. But if we are talking about three years I will assume things changed.

MR. PELUSO: This I will do, Judge.

THE COURT: All right. What is your question?

Q I believe that you testified earlier that you were earning approximately $350 a week; is that right?

A In 1970.

Q Were you earning the same sum in 1971?

A In '71, yes.

Q And in 1972?

A No.

Q What were you earning in '72?

A Less. I became a dispatcher instead of a driver, and my earnings went down. I earned approximately $100 a week less.

Q Was this at or about the time that you got your divorce from your wife?

A No, I got my divorce from my wife a year ago.

104 cmsr Jackson - cross

Q I believe you said that you had loan in order to purchase the car that you were driving for Al?

A That's true.

Q About how much were you paying towards that loan in 1970?

A I wasn't paying towards it. My wife worked for IBM and my wife was able to borrow the money for me and it was deducted from her salary.

14

Q I see. So your wife was then repaying the vehicle.

A My wife was repaying the loan through her salary, right.

Q When for the first time, sir, did you mention Mr. DeVito?

A When did I meet him?

Q Mention Mr. DeVito to any of the agents of the United States Government.

MR. ABZUG: Objection.

A I don't understand, when did I mention it? I said that they came to my home in the summer of '73.

Q Do you remember what month that was?

A No. I would guess it was June or July. Maybe earlier than that.

Q I'm sorry, Mr. Jackson, you say that sometime in

July or August --

A I didn't say that. You asked me when the FBI agents came to my home, and I told you that I thought it was in June or July, or it might have been earlier than that. I'm not sure. It was in 1973, and it was sometime before July.

Q Did you mention to the agent that came to your home, Mr. Raleigh or Mr. Potkonjak, on that occasion when they first came to your home, did you mention Mr. DeVito's name to them?

A I didn't mention anything. They asked me questions and I gave them answers.

Q And in response to their questions --

A Yes.

Q [continuing] -- did you mention Mr. DeVito's name?

A You mean did I answer that I knew him?

THE COURT: Now look, we're having confusion. What is your precise question?

MR. PELUSO: My precise question is:

Q When they came to your home for the first time --

A Yes.

Q [continuing] -- and asked you questions --

A Yes.

Q [continuing] -- did you on that occasion in response to their questions or voluntarily mention the name Mr. DeVito to the agents?

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Overruled.

A I didn't mention his name. They mentioned his name and I responded.

Q You say that on the first occasion they mentioned his name to you?

A Yes. My recollection was they asked me if I knew certain people, and he was amongst the people that they asked me about.

Q And as you were responding to these questions were the agents making notes?

A I think so. I think they had a yellow legal pad, I'm not sure, but I think so.

MR. PELUSO: Judge, may I approach the bench?

THE COURT: Yes.

[At the side bar:]

THE COURT: Do you have an application?

MR. PELUSO: Yes, your Honor. In view of the response to my question that sometime in June or July, I believe it was, that he was interviewed by the agents that he mentioned Mr. DeVito, I am looking through the material

that was furnished me by the U. S. Attorney and I don't find any notes concerning that specific time.

Now I am making a request at this time that if there are such notes that the U. S. Attorney be directed to furnish them to me.

THE COURT: Are there any other notes?

MR. ABZUG: No, sir.

THE COURT: All right.

MR. PELUSO: May we have a stipulation on the record then that there are no such notes?

THE COURT: He said there weren't. All right, anything else?

MR. ABZUG: Your Honor, may I advise the witness in the presence of all parties that we have arranged another airplane flight for him? He seems to be somewhat concerned, and I know he is not going to be able to make his four o'clock flight.

THE COURT: Aren't you through with the cross?

MR. PELUSO: Judge, one of the problems is that we got this late and it was very, very illegible.

THE COURT: All right. We will cover that, but you know --

MR. PELUSO: I'm trying to cover --

THE COURT: How much more do you have for him?

MR. PELUSO: I really don't feel I have gotten into the meat.

THE COURT: What is there? You must have some idea what you are doing in cross. I haven't heard any cross that really brings out anything. We have just gone and spent time. Now, if there is any point you want to make on cross, why don't you make it and let's get on to the next witness.

MR. PELUSO: I just don't want to cross-examine in abstract, Judge. I want to lay a foundation for what I'm going to cross-examine on.

MR. WALLACH: Also for summation.

THE COURT: But you know we can't spend two days on every witness in this case for no good reason.

MR. PELUSO: I don't propose to.

THE COURT: The direct went very quickly, and I haven't heard much on cross that added anything to the case so far, but we have taken a lot of time. I expect you to get through your cross and we will go on to another witness this afternoon.

[In open court:]

THE COURT: All right, finish up the cross, please.

BY MR. PELUSO:

Q Mr. Jackson, who first introduced you to Mr. DeVito?

A Mr. Dinino.

Q Who first told you that Mr. DeVito was Mr. DiNino's partner?

A Mr. Dinino.

Q Do you have an infinite recollection, sir, of this introduction?

A Pretty good.

Q And your recollection is that on one occasion Mr. Dinino introduced you to Mr. DeVito, and Mr. Dinino said, Mr. Devito is my partner?

A Well, he didn't do it in -- in other words, it was done in my presence and other men in the taxi stand. He didn't come to me prevately and say it.

Q There is no doubt in your mind that Mr. Dinino told you that Mr. DeVito was his partner?

A No.

THE COURT: There is no doubt?

THE WITNESS: There is no doubt.

THE COURT: All right.

Q Are you as certain about that testimony, sir, as you are about everything else you testified to here today?

A Well, the only thing I am not certain about is the exact dates. It goes back five years. But I am certain of the series of events that took place and the people that were involved.

Q Do you remember testifying, sir, on October 19, 1973, before the Grand Jury?

A I remember testifying in 1973, yes.

MR. PELUSO: May I direct the Court's attention to the minutes of the Grand Jury dated October --

THE COURT: You don't have to direct my attention.

MR. PELUSO: I want the U. S. Attorney to know from where I am asking my question.

MR. ABZUG: Objection,your Honor.

THE COURT: Look, you have got a question to ask. You can ask it. Do you have a question to ask based on Grand Jury testimony of October 1973 or don't you?

MR. PELUSO: Yes, I do, Judge.

THE COURT: All right, let's ask it.

MR. PELUSO: I'm making reference to Page 11, Judge.

THE COURT: All right. Page 11.

BY MR. PELUSO:

Q Were you asked on that occasion by Mr. Padgett, the Assistant U. S. Attorney:

111 cmsr Jackson - cross

"Q Who told you that Vinnie was John Dinino's partner?

"A Vinnie."

Do you remember making that answer to that question?

A I don't remember making it, but I am sure if it's there that's what I must have said.

Q Was that answer incorrect?

A To my recollection right now Mr. Dinino introduced Mr. DeVito to me and other people as his partner. That's my recollection now. What I said in '73 would be wrong according to my recollection now.

Q You were under oath in '73, weren't you, before the Grand Jury; is that right?

A The same as now, yes.

Q And on that occasion in response to that question you did not say that it was Mr. Dinino --

THE COURT: Look, we don't have to have argument. You have read it, he has given you his side of it, and the jury has the whole thing. We don't have to argue the point.

Do you have anything else on cross?

Q Let me ask you this, sir: Is your memory better today than it was back in October of 1973?

MR. ABZUG: Objection.

THE COURT: Overruled.

A I would say my memory is not better regarding this particular set of events, no.

Q By the way, sir, you said there came a time when in addition to borrowing money from Mr. Dinino you were calling in bets; is that right?

A That's true.

Q Is that right, sir?

A I said, that's true.

Q And I believe you said that it was Mr. Dinino who told you that he had a telephone number that you could use to call in bets; is that right, sir?

MR. ABZUG: Objection. It is a misstatement of his testimony.

THE COURT: Yes, just ask the question directly. Don't ask what he said this morning or this afternoon. Just ask the question directly.

Q Did Mr. Dinino tell you directly that in addition to Shylocking he was also in bookmaking?

A He didn't say it that way, no.

Q Did you ever tell this to the agents that you spoke to?

A Did I ever tell what?

Q In that way.

A What you just said?

Q Yes.

A You're asking me -- I'm telling you now whatever I said in 1973 under oath it was my recollection then, and I stand by it. That's what I said then. That's what my recollection was then.

Q I know, but my question was, sir --

A What?

Q [continuing] -- did you ever tell the agents with whom you spoke that Mr. Dinino told you that in addition to Shylocking he was in bookmaking?

A Did I ever tell him that in exactly those words? I don't recall if I told him that.

Q You have no --

A I assume I must have told him that he was engaged in Shylocking and bookmaking. If I didn't use exactly those words, I implied that.

Q Did you tell the agents that Mr. Dinino told you that he was in bookmaking as well as Shylocking?

A I don't recall if I told them he told me or not

Q Well, how is it that you happened to start placing bets with this telephone number --

A Through Mr. Dinino?

Q [continuing] -- through Mr. Dinino?

A I think I testified to that, but I will say it again. Louis Materasso was dispatcher in Al's Taxi at the time, and he told me that if I wanted to gamble on horses, or betting on ball games, that Mr. Dinino now was booking and he had a number that he could get for me to gamble through.

Q Louis Materasso told you this?

A He told me this. He was the one that told me originally about it, yes.

Q No doubt that it was Louis Materasso that told you that?

A No doubt about it, did you say? I recall it pretty vividly, yes.

Q I am reading from Page 6 of the Grand Jury minutes of October 19, 1973. Were you asked this question:

"Q Did there come a time during your relationship when this motivation changed to pay him, your motivation was originally because he was a source of credit?

"A Yes, it did.

"Q When was that?

"A After borrowing money from Dinino for about less than a year and knowing that I was a gambler, he told me that in addition to Shylocking he was in the

bookmaking business and that if I wanted to he would give me a telephone number to call and gamble through, and since I had exhausted all other means of credit I took the number in addition to borrowing and owing him money, I also gambled through him in an office that he represented."

A That's true.

Q Do you remember testifying to that before the Grand Jury?

A That's true. I must have. And I testify to it now, too.

Q Well, was it Mr. --

A Well, we're splitting hairs now. Mr. Materasso --

MR. PELUSO: I object to that remark, Judge.

THE COURT: Yes.

A Mr. Materasso was the one -- I apologize -- Mr. Materasso was the one who told me about Mr. Dinino's bookmaking activities, and I went to him through Materasso and said I'd like to use your number, and he gave me the number. It's possible that I went to him and asked can I place bets with you, or he said, here's the number, you can -- I don't remember how the exact -- who said what to who in that sequence.

Q When you testified before the Grand Jury on October 19, 1973, were you specific as to who told you

what?

MR. ABZUG: Objection.

THE COURT: Sustained. You don't have to argue with the witness what his Grand Jury testimony is. The jury has heard it, they have heard his testimony here. Let's go on to the next point.

Q Did you on that occasion tell the Grand Jury that it was Mr. Matarasso --

THE COURT: He has testified. The jury has heard the testimony. You have read it. You don't have to argue with him about what it means. That's just what I said. Let's go on to the next point.

Q By the way, in any of your conversations with the agents did you give a description of Mr. DeVito?

A No. I'm sure I didn't.

Q Did you in any of your conversations with the agents give them Mr. DeVito's last name?

A No.

Q Did you on any of your conversations with the agents give them the make or model or license plate number of any car that Mr. DeVito might have been driving when he came up to your place at Al's?

MR. ABZUG: Objection, your Honor. It is totally collateral.

THE COURT: Overruled.

A No, I don't recall giving them any information about his car or license plate.

MR. PELUSO: I have no further questions.

THE COURT: All right.

MR. PELUSO: May I have one second, Judge?

THE COURT: Yes.

Mr. Bloustein, do you have anything else?

MR. BLOUSTEIN: Not at this time, Judge.

THE COURT: All right. Do you have any redirect, Mr. Abzug?

MR. ABZUG: Just a few brief questions, your Honor.

THE COURT: All right.

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REDIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Jackson, did you ever borrow money from Vincent DeVito?

A Yes.

Q When, sir?

A On different times during the year 1971.

THE COURT: Why wasn't this gone into on direct? I don't understand this.

MR. ABZUG: Sorry, your Honor. I will just get

through this line of questioning.

THE COURT: Yes, please. Let's strike it. You didn't go into it on direct, I don't want cross on it, so we will strike any reference to borrowing money from DeVito.

All right, what else?

Q Mr. Jackson, approximately how much money in total did you borrow from Mr. Dinino?

THE COURT: He has already said that twice.

Q And how much money did you pay back to Mr. Dinino? Approximately, sir.

A I'd have to take a few minutes to figure it out.

Q Well, is it in excess of $1,500?

MR. PELUSO: I am going to object to the leading, your Honor.

THE COURT: Yes, I will sustain the objection. Just a minute. I will suggest, I think this is something that should have been gone into on direct.

MR. ABZUG: The jury can make their own computations.

THE COURT: I think if you are going to go into that have them before they get on the stand calculate that amount so we don't have to spend time.

MR. ABZUG: All right, your Honor. I have

119 cmsr

no further questions.

MR. BLOUSTEIN: Your Honor, based upon the redirect of Mr. Abzug it raises some question in my mind that I would like to --

THE COURT: What redirect did he -- I don't think he was permitted to answer a single question.

MR. BLOUSTEIN: He asked a question, did he borrow money from Mr. DeVito, and he said yes.

THE COURT: I struck that.

MR. BLOUSTEIN: Well, I think the jury may be confused now as to what monies were borrowed, whether the testimony given originally was only from Dinino or whether that was Dinino and DeVito. I don't know myself,your Honor. I will abide by your Honor's ruling.

THE COURT: Does Mr. DeVito's counsel want to go into that?

MR. PELUSO: Judge, I rest at this point.

THE COURT: All right. Yes, I think so. I am going to say to the jury unless there is a correction that should be made, and I am sure counsel will bring it to my attention, that we have several other witnesses in this case. I have stricken any reference to borrowings from DeVito and what that means is when you are considering the evidence at the end of the case you will not consider

anything about that, it is stricken from the record and so that we can make some progress on this trial.

You are dismissed, Mr. Jackson. Thank you.

[Witness excused.]

THE COURT: All right, next witness.

MR. ABZUG: The Government calls Sidney Shalkin.

S I D N E Y S H A L K I N , called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Shalkin, where do you currently reside, sir?

A 64 Morris Street, Yonkers, New York.

MR. BLOUSTEIN: I didn't hear that.

THE COURT: Just repeat that.

THE WITNESS: 64 Morris Street, Yonkers, New York.

Q Are you currently employed, sir?

A I am.

Q Where, sir?

A 211th Street and Broadway.

Q What capacity?

A Dispatcher.

Q Directing your attention to 1971, how were you employed then, sir, if at all?

A Al's Car Service.

Q Where is that located, sir?

A 5999 Broadway.

Q How long did you work at Al's Car Service?

A Oh, I guess about four years.

Q From what period of time, sir?

A 1970 to about 1974.

Q Directing your attention again to 1971, what were your hours then, sir?

A Well, I never worked a full day. I used to work -- leave say, three, four o'clock in the afternoon. The usual hours is twelve hours.

Q Why did you only work until three o'clock, sir?

A Due to my health.

Q Mr. Shalkin, do you know a man by the name of John Dinino?

A Yes, I do.

Q Is he in the courtroom today?

A Yes.

Q Would you identify him for the jury, please?

A The gentleman sitting right over here [indicating.]

MR. ABZUG: Let the record reflect the witness

has identified Mr. Dinino. You may sit down.

THE COURT: Yes.

Q When did you meet Mr. Dinino?

A Oh, I don't know. It was about 1972, I believe.

Q Was that when you first met Mr. Dinino?

A That's about it, yes.

Q Did there come a time when you borrowed money from Mr. Dinino?

A Yes.

Q When was that, sir?

A Well, I guess about a year and a half or so after I was employed there.

Q Where did you borrow the money from him, sir?

A Well, around the area there.

Q What area, sir?

A Around where the office was, 5999 Broadway.

Q Approximately what time of day was it?

A I didn't hear you.

Q What time of day did you borrow the money, sir?

A I believe in the evening.

Q Who was there when you borrowed the money?

A Oh, I don't recall. I couldn't tell you who was around.

Q Did you have a conversation with Mr. Dinino?

A Well, the only conversation I had, I needed this money pretty bad and I asked him, and he was good enough to give it to me at the time.

Q Why did you need the money, sir?

A Well, due to circumstances being in debt I needed to pay some debts.

Q How much did you borrow from him, sir?

A $200.

Q How much were you required to pay, sir?

A Approximately about 25 a week.

Q For how long, sir?

A I believe it was about twelve weeks.

Q How many $25 payments did you make, sir?

A I think I made six or seven, and I became ill.

Q All right. Now, who did you make the six or seven payments to?

A To Mr. Dinino.

Q Where, sir?

A In the same area that I was employed in.

Q What time of day?

A I believe in the evening.

Q What happened after you made the six or seven payments?

A Well, I was out of work for a while. I wasn't

able to --

Q Why were you out of work, sir?

A Well, I was ill. I have heart disease and diabetes.

Q Where were you during the period that you were ill, sir?

A I didn't hear that. I'm sorry.

Q Where were you during the period that you were ill?

A I was at home.

Q How long were you ill?

A I guess about two months or so, approximately.

Q What did you do after the two months were over?

A I went back to work.

Q Where, sir?

A In the same company, car service.

Q Did you have a conversation with Mr. Dinino when you came back?

A Yes.

Q Where did the conversation occur?

A Well, in the same area as the car service. I don't know, it might have been outside, it might have been inside. I don't particularly remember.

Q Do you recall who was there besides yourself and

Mr. Dinino?

A No, I don't.

Q What did you say to Mr. Dinino and what did he say to you?

A Well, I told him the circumstances, I believe, and there was a remark made that I might get a punch in the nose.

Q What did you do after that, sir?

A Well, I resumed payments, and I believe I got a renewal after that.

Q How many renewals -- when you speak of a renewal, could you explain to the jury what a renewal is?

A Well, the same as you would anywhere else. You get so much money, and it's added on and they bring it up to the original amount.

Q How many of these renegotiated loans did you make, sir?

A Maybe two or three.

Q Who were they from, sir?

A Mr. Dinino.

Q Did you make payments on these loans?

A I sure did.

Q To whom did you make the payments?

A Mr. Dinino

Q Did you make these payments to anyone else?

A I may have once. A gentleman who I -- I don't remember too well, but I think his name was Vincent.

Q Would you look around the courtroom today and see if the man named Vincent is here in the courtroom that you paid?

A I believe he is sitting over here [indicating.]

MR. ABZUG: Let the record reflect, your Honor, that the witness has identified the defendant Mr. DeVito.

MR. WALLACH: Excuse me, your Honor. Objection. May we approach?

THE COURT: No, I don't see any reason for that. Let's not take time --

MR. WALLACH: I move to strike out his testimony as to the co-defendant. The testimony was, "I believe."

THE COURT: Let me just ask you, do you see the person, do you see Vincent in this courtroom?

THE WITNESS: Yes, I do believe -- my memory is very bad, your Honor.

THE COURT: All right. What is your testimony now about whether you see Vincent here?

THE WITNESS: Yes, I believe so, yes.

THE COURT: Which person is he according to your belief?

THE WITNESS: Yes, sir.

THE COURT: The man in the green suit with the greenish tie?

THE WITNESS: Yes, sir.

THE COURT: All right. Motion denied.

BY MR. ABZUG:

Q Did you pay this man Vincent before or after John Dinino threatened to punch you in the nose?

A Oh, I don't recall. I say my memory is bad. I couldn't make a definite answer on that, sir.

Q Well, did you pay the man known to you as Vincent on the first loan or the following series of renogiated loans?

A I think it was on the following.

Q How long did you owe money to Mr. Dinino?

A Oh, I don't know. Approximately a year or so.

Q How long did you make payments to him, sir?

A Well, on and off during the course of the year that I was ill, and so forth, about a year.

Q How much were these renegotiated loans for, sir?

A Oh, maybe $60.

Q Is that how much you would receive from Mr. Dinino?

A Yes, sir.

Q What would that bring the balance up to, sir?

A It would bring it up to the original amount.

Q Which was what, sir?

A 200.

Q How much were your payments during this period, sir?

A 25.

Q Approximately during this period, and speaking now of 1971, what were your wages, sir?

A Oh, I earned on the average maybe 120, $80 a week.

THE COURT: I didn't get that. What were your wages?

THE WITNESS: Approximately 120.

THE COURT: All right, go ahead.

Q Did you finish paying off Mr. Dinino?

A Yes, sir.

Q When was your last payment to Mr. Dini

A Oh, I don't know. Like say, it was during the course of the year's time that I was ill, and so forth, and I paid it off and I started to work again.

Q When did you pay off the last renegotiated loan, sir?

A Oh, I don't recall the date, sir.

Q Do you recall talking to the FBI, Mr. Shalkin?

A Yes, sir.

MR. ABZUG: May I have this marked as a Government exhibit.

[Government Exhibit 1 marked for identification.]

BY MR. ABZUG:

Q Now showing you what has been marked for identification only as Government's Exhibit 1, I direct your attention to the second paragraph on this document, sir.

Does that refresh your recollection as to when the last payment to Mr. Dinino was made [handing]?

MR. WALLACH: Objection, your Honor.

THE COURT: Overruled.

Q I also invite your attention, sir, to the date at the bottom of the document.

Do you recall now, sir, when you made your last payment to John Dinino?

A Between 1973 and '74, I guess.

Q After looking at what has been marked into evidence as Government's Exhibit No. 1 --

THE COURT: It isn't in evidence, it is marked for identification.

MR. ABZUG: I am sorry. I misspoke myself, your Honor.

130 cmsr Shalkin - cross

I have no further questions of this witness, your Honor.

THE COURT: All right.

Mr. Bloustein.

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CROSS-EXAMINATION

BY MR. BLOUSTEIN:

Q Mr. Shalkin, when for the first time did you tell anybody about the remark, "punch in the nose?"

A When did I tell them?

Q Yes.

THE COURT: Hold it one minute. All right, go ahead, Mr. Bloustein.

MR. BLOUSTEIN: Excuse me, your Honor, how late are we working?

THE COURT: We are working until about 4:30, and I hope we can finish this witness so he can go home.

17

Q Do you understand my question, Mr. Shalkin? When for the first time did you tell anybody about the remark about the punch in the nose?

A Well, I believe it was before the Grand Jury.

Q That was the first time; is that correct?

A That's right.

Q Now you testified in the Grand Jury on October 29, 1973. Does that date refresh your recollection?

A It does, yes.

Q Before that you were interviewed by some FBI people, were you not?

A Yes, sir.

Q And that interview took place on September 11, 1973; is that correct? Don't shake your head, the Reporter can't --

A I believe so, yes.

Q Now, did you tell the FBI people anything about the threat to punch you in the nose?

A Not at that period of time, no.

Q No. That wasn't important to you at that time?

MR. ABZUG: Objection.

THE COURT: Let's not argue with the witness, please.

MR. BLOUSTEIN: I'm not arguing, Judge.

Q There is nothing that prompted you to tell them about the remark punch in the nose in September --

THE COURT: I don't know what that would mean, nothing that would prompt him.

Q Did you give a statement to the FBI about this incident that you testified to today?

A Did I -- before the Grand Jury, yes.

Q No, prior to going to the Grand Jury.

A No, sir.

Q You never told the FBI about this?

A No, sir. Not to my recollection.

THE COURT: Please sit down, Mr. Abzug.

MR. BLOUSTEIN: Now I offer into evidence a document that was handed to me by Mr. Abzug dated 9/11/73 which was offered, I believe, for identification by the Government as Government Exhibit 1 for identification.

THE COURT: Let's have that marked. Would you mark this as a defendants' exhibit for identification. Defendants' Exhibit A for identification.

*** [Defendants' Exhibit A marked for identification.]

THE COURT: Is there any objection to Defendants' Exhibit A?

MR. ABZUG: Is it being offered into evidence, your Honor?

THE COURT: Yes, it is.

MR. ABZUG: Yes, your Honor, we do have an objection.

THE COURT: May I see it? I will receive it. Defendants' Exhibit A is received.

*** [Defendants' Exhibit A received in evidence.]

BY MR. BLOUSTEIN:

Q Mr. Shalkin, the first time that you spoke about the punch in the nose was in the Grand Jury; is that correct?

A Yes, sir.

Q But you didn't state it, Mr. Padgett stated it, "Weren't you threatened with a punch in the nose"?

MR. ABZUG: Objection.

THE COURT: You can read the --

MR. BLOUSTEIN: I would like to read it.

"Tell us very briefly in outline form" --

THE COURT: What is the date of this?

MR. BLOUSTEIN: This is 10/29/73, your Honor, reading from Page 5.

THE COURT: All right.

MR. BLOUSTEIN: "Tell us very briefly in outline form the circumstances surrounding that" -- this is only a prelude -- "Well, I had fallen behind due to circumstances beyond my control, but he wasn't interested in my excuse. He just wanted to know when he was going to get his money. And we had words" -- I'm terribly sorry, your Honor.

MR. ABZUG: Because he said in the Grand Jury, your Honor, "And he threatened to punch me in the nose."

THE COURT: I think the jury is clear, he testified, is this right just so there is no misimpression,

he testified before the Grand Jury in substance what he testified today.

MR. BLOUSTEIN: Right. But prior to that time he did not.

THE COURT: All right.

BY MR. BLOUSTEIN:

Q Now, Mr. Shalkin, Mr. Dinino didn't come to solicit you for this kind of business, did he?

A No, he didn't.

Q You went to him?

A That's correct.

Q You needed money. You deemed this a favor that he was giving you.

MR. ABZUG: Objection.

THE COURT: Sustained.

Q He was helping you.

MR. ABZUG: Objection.

Q Is that correct?

THE COURT: I will sustain the objection. I don't think that this really helps very much.

Q Now, did you ever borrow money from private lenders before?

A No, sir.

Q This was the first time? Do you gamble?

THE COURT: There wasn't any answer. Was this the first time you borrowed in this way?

THE WITNESS: Yes, sir.

MR. BLOUSTEIN: He shook his head.

THE COURT: I'm sorry.

Q Do you gamble, sir?

A On occasion, yes.

Q Did you borrow this money for gambling purposes?

A No, I didn't.

Q Isn't it a fact, Mr. Shalkin, that many times one would say, I'll punch you in the nose, and never do it?

MR. ABZUG: Objection as to relevancy, your Honor. What difference does it matter --

THE COURT: Well, I think there is a point --

MR. ABZUG: If he wants to argue --

THE COURT: Just a moment.

MR. ABZUG: I'm sorry.

THE COURT: I'll let you explore this. I think you are entitled to bring that out.

MR. BLOUSTEIN: Would the Reporter read back the question?

THE COURT: Can't you ask him --

Q Isn't it a fact that many times in your life somebody would say, if you don't do thus and so I'll punch

you in the nose?

A I guess it could happen.

Q And they never did punch you in the nose?

A No.

Q It is just a figure of speech.

A It could be.

Q And nobody punched you in the nose when you took longer to pay this money?

A No.

Q Mr. Dinino never hurt you, did he?

A No, he never did.

Q Who was your boss at Al's? Who was your superior there?

A Mr. Joseph Codemo.

Q Joseph who?

A Codemo.

Q Isn't it a fact that Tommy Brando was another one of your superiors?

A Yes.

THE COURT: Tom who?

MR. BLOUSTEIN: Brando. B-r-a-n-d-o.

THE WITNESS: Yes, sir.

Q Didn't Mr. Brando have a transaction with Mr. Dinino whereby he bought a car from Mr. Dinino?

A Not to my knowledge. I don't know, sir, what kind of business he ever carried on with anybody.

Q Do you know that Mr. Dinino was in the automobile business?

A All I know, Mr. Dinino, I understood he had a gas station.

Q A gas station, and that he fixed cars. And didn't you know that Mr. Brando had some transaction with him concerning a car?

A No, I don't.

MR. BLOUSTEIN: You don't know. I have nothing further, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. PELUSO:

Q Mr. Shalkin, did you, on September 11th -- I'm sorry, September 5th, 1973, discuss this case with Mr., I believe the name is Potkak, or Mr. Baron?

A Yes.

THE COURT: You're talking about FBI agents?

MR. PELUSO: I believe they are.

THE COURT: Did you have discussions with the agents at that time?

THE WITNESS: Well, they --how I met them,

138 cmsr Shalkin - cross

they came to my home.

THE COURT: All right.

Q Did this conversation take place in Yonkers, New York?

A Yes, sir, at my home.

Q Did you discuss this case on any other occasion with any other agents?

A No, sir.

Q Did you discuss this case on any other occasion with any other Assistant U. S. Attorney or members of the United States Government?

A Only when I was brought down before the Grand Jury.

Q So that --

A On the subpoena.

Q So that you discussed this case on one occasion on September 5th, 1973, and once before the Grand Jury; is that right?

A That's right.

Q When you discussed the case on September 5th, 1973, in your home were the agents asking questions and you responding to their questions?

A Yes. The agents --

Q And they were making notes?

A I believe he was.

Q On September 5th, 1973, on this occasion when you discussed this case with the agents did you mention to them, or did they ask you about Mr. Vincent DeVito?

A No, I don't believe they did. Anyway, I don't remember.

Q And you had no discussions other than the discussion on September 5th, 1973 and your testimony before the Grand Jury on October 29th, 1973; is that right?

A Yes.

MR. ABZUG: About what, your Honor?

MR. PELUSO: About this case.

THE COURT: The answer is no. All right, go ahead.

Q And did you on October 29th, 1973, testify about Mr. DeVito?

A Was that the day --

Q In connection with this case.

A Was that the day before the Grand Jury?

Q The day in the Grand Jury.

A That's the only time.

Q That was the first time that you mentioned anything about Mr. DeVito; is that right?

A That's right.

Q Now, did you in fact speak about Mr. DeVito or did you on that occasion speak about a Vinnie?

A No, I never knew his last name. I only knew the gentleman as Vinnie. I never knew that he had any connection.

Q I believe you testified, and if I am incorrect please correct me, that on one occasion Vinnie collected money from you that you owed to Mr. Dinino.

A That's right.

Q Now, you worked at Al's Taxicab place from 1970 to 1974; is that right?

A Right.

Q And did you work five days a week?

A Yes -- no. I used to -- sometimes I used to work two, three days a week there.

Q Did you work Mondays?

A I worked on Monday.

Q Wednesdays?

A Sure.

Q Fridays?

A Sometimes.

Q What hours did you work?

A Well, I usually worked about seven or eight hours. I never -- very seldom I worked a full twelve hours.

Q Can you tell us which were the hours during the day that you worked there?

A Well, approximately from six in the morning till three, four in the afternoon.

Q Were you working at Al's --

A Sometimes until six.

Q I'm sorry.

A I said, sometimes until six.

Q Were you working at the same time that Mr. Jackson was working at Al's Taxicab Service?

A Yes, I was.

Q Did you see Mr. DeVito --

MR. PELUSO: Withdrawn.

Q Did you give money to Mr. DeVito on more than one occasion?

A No, I never did.

Q During that period of time?

A No.

Q Did you see him on at least fifty occasions --

A No.

Q [continuing] -- come into Al's Taxicab place?

A No, I wouldn't say that.

MR. PELUSO: I have no further questions.

THE COURT: Redirect

MR. ABZUG: No, your Honor.

THE COURT: All right, you may step down, Mr. Shalkin. Thank you.

[Witness excused.]

THE COURT: Ladies and gentlemen, we will recess, as I said, until 12:30 tomorrow. Please be back promptly at 12:30 and have your lunches before you come so we can have a full afternoon. You may retire and I will speak to the lawyers for just a moment.

[Jurors leave the courtroom.]

THE COURT: I just wanted to make sure, I take it that you have now turned over all 3500 material on all witnesses; is that correct?

MR. ABZUG: No, that is not correct, your Honor. I am going to do so right now. I just want to make a record of it. I would like to make a record, your Honor --

THE COURT: All right, you can make a record. I am going to recess and you can put it on the record with the reporter. I don't think I have to be here. We have a judge's meeting.

MR. ABZUG: There is one thing I would like to clarify in your Honor's presence. There was a statement at the side bar that certain of the 3500 material that was turned over I believe to Mr. Peluso was illegible.

I believe that that is an error on Mr. Peluso's part. I would like him to bring to the attention of the Court the portions that are illegible so perhaps we can clear this up.

THE COURT: I don't think he is making a motion or trying to do anything, so let's not -- it was a discussion and we have concluded that cross-examination fine. You can give out the rest of the 3500 material and put it on the record now, and I will go ahead to my meeting and I will see you at 12:30 tomorrow.

MR. ABZUG: Let the record reflect that I turned over the following 3500 material to Mr. Bloustein and Mr. Peluso in the early afternoon, December 1st, 1975:

The Government turned over 3520 which is a statement of Philip Jackson on October 19, 1973, before the Grand Jury; the Government turned over 3521, another statement of Philip Jackson to the FBI on November 20, 1973; the Government turned over 3522, another statement of Philip Jackson of October 26, 1973, at 3:02, a statement to the FBI.

Let the record reflect that in the early afternoon of December 1st, 1975, the Government turned over all the statements of Philip Jackson enumerated on Court Exhibit A marked for identification, and all the statements

of the witness Sidney Shalkin enumerated on Court Exhibit A marked for identification.

It is now 4:35 p.m., the Government is turning over the remainder of the 3500 material enumerated on Court Exhibit A marked for identification.

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[Court Exhibit A marked for identification.]

[Time noted: 4:35 p.m]

[Court adjourned until December 2, 1975 at 12:30 p.m.]

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UNITED STATES OF AMERICA
vs. 75 CR 265
JOHN DININO and
VINCENT DE VITO.

New York, December 2, 1975;
12.30 P.M.

Trial resumed.

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(In the robing room.)

THE COURT: I had a call from Alternate Simmons at or about 12.15 or 12.20. She said that she was taking the subway, and that the subway had been stopped because of some power failure. She is way up in the Bronx. She has no money to take a cab.

They are putting her on a bus, and then she has to come in to Manhattan and take a train. I think she could very well be another half-hour or probably more. I think we have to go on.

MR. BLAUSTEIN: I have no objection.

MR. PELUSO: No objection, your Honor.

MR.ABZUG: The government waives her appearance, your Honor.

Your Honor, may I bring one brief evidentiary matter to your Honor's attention. As I understand the Court's ruling, there was no question yesterday as to

whether the government could propound questions to the witnesses as to their state of mind involving certain acts of the defendants.

Perhaps I did not express myself clearly. In the argument yesterday I had no authority to cite to your Honor. I furnished the complete opinion of the Russo case which was brought to your chambers this morning. It provides that the witness's state of mind in an extortion case is admissible.

THE COURT: Where does it provide that?

MR. ABZUG: In the Russo case, your Honor. In any event, the Second Circuit held in that case that the government could prove its case by showing that the defendants' acts inspired actual fear in the government's witnesses, or that they would cause a reasonable fear.

The relevant portion begins on this paragraph, page 8, and the most relevant part is on page 10.

THE COURT: This deals with a charge. It does not deal with the admissibility of evidence.

MR. ABZUG: Correct, your Honor, but except if you do read on --

THE COURT: It says it is true that the charge did not require the jury to find that the persons threatened had actually been placed in fear, but the threat of harm

mp3

prohibited by 894 and actual fear is not an element of the defense.

And they have a "but see" in a cite to an Eighth Circuit case. I don't know what is meant by that, but usually you sort of disagree with it. It says that to be convicted the defendant must have intended to make a threat to cause harm and so forth, and convictions have been sustained under this statute even where the person denied at the trial that he was put in fear.

The approach chosen by the trial judge to define the word "threat" gives the statute a proper construction since it focuses the jury's attention on the evil being attacked, the defendant's conduct, and then it goes on to say "Acts or statements constitute threat if they instill fear in the person direct or calculated to do so in light of the surrounding circumstances."

MR. ABZUG: That is the portion I submit is relevant.

THE COURT: I think you are right. I think the actual fear, although it was not charged as a necessity by Judge McMahon, it still, I think, is every indication it is relevant.

I have just had a reaction from yesterday. I am not going to permit you to lead a person into telling

mp4

the jury that he was made afraid when somebody was acting in a way that would not normally put someone under fear. You know, there is a limit.

MR. ABZUG: Perhaps my questions were inartfully phrased.

THE COURT: I do not remember. I do not say you were trying to do this. I get your point. I will be guided by this, but I still -- I must say to you that the case so far has shaped up, and this is really sort of the background of my thinking, the case has shaped up thus far in a much less terroristic fashion than I would have started out thinking of with reference to extortion.

MR. ABZUG: Which is precisely why I think it is relevant that the witnesses explain what effect the act had on them.

In other words, if I may use a rather mundane example, your Honor, if I was a creditor and you were a debtor -- and words have various meanings. My words to you may have one meaning or they may have another meaning. It is relevant that the witness explain the context of the relationship to explain what the defendant intended that he meant when he said the words.

For example, if I were a creditor and you were a debtor and we had a long friendship for two years, and

mp5

we had a code word that whenever I said to you, "I am going to punch you in the nose unless you pay money," and what that meant was that I was going to take you out to dinner, and any person objectively viewing that relationship would think there is a threat there, but when the witness explained the relationship between himself and the creditor, he would be able to say that that is not what the defendant really meant.

And that he did not mean to say that that was an invitation to dinner. That is why I say that.

THE COURT: When you have a situation and Jackson comes in and testifies that Dinino says, "I don't want to hear any more stories. I got to get paid," but then he composes the debt, the total debt, for $100 a week payment, and then upon objection by Jackson, he agrees to accept $10 a week -- where is the extortion?

I mean that I am seriously considering whether I could possibly let any claim about Jackson go to the jury. Jackson could come in and testify till the cows come home that he was afraid, but Jackson was a pretty muscley guy on the stand. The upshot of it all is that Dinino caved in and was letting him pay off $10 a week, and that was never all paid. I suppose it was interrupted by the investigation.

MR. ABZUG: I would argue on a motion to dismiss, your Honor, but I would point out at this juncture that what I would argue to the jury is the defendants' continuous recitation that they had to check that with various officers, and that was designed to instill a doubt of fear in the victim's mind.

THE COURT: Extortion is a serious crime, and you have to have a case. As far as I am concerned, I will tell you right now that I do not think you have a case on Jackson. To convict a guy for extortion you have to prove beyond a reasonable doubt something besides the kind of give and take among grown, rather rough men in circumstances in which they found themselves.

This was not the lobby of Morgan Guarantee. It was not intended to be. There may have been a crime or wrongdoing by engaging in this kind of conduct, but that is not under the law I am worried about. There may be a problem under State law. Maybe the State should not or does not permit people to loan under these terms and circumstances. I have no idea. But I am dealing with an extortion statute. I think in order to label somebody with an extortion conviction, it has to be a lot more than what was shown with Jackson.

I state that tentatively and I am not granting

mp7

a motion to dismiss. I will hear you out.

I think if you have a very thin case on its facts, I am going to be a little bit careful in allowing the witness to testify about fear. Now, I guess you have just the opposite reaction, and maybe you are right. If you have a case where there are no very serious threats which are made expressly, and the words used aren't very serious, you would think it is all the more important to you to put in the fear. I will consider all this. Let's not try topredict. Let's take it one step at a time and see what your proof is as you go along.

MR. WALLACH: Your Honor, may I bring something up? To expedite things, your Honor, there may be photographic identification in this case. I have a decision outside, and it just came down, I do not want to interrupt the trial, your Honor, but we may be compelled to ask for a hearing outside the presence of the jury, a hearing as to whether any photographic identification of the accused --

THE COURT: We will cover that. That is an easy matter.

If you want to make an application for a hearing, make it.

(The jury entered the courtroom.)

THE COURT: Alternate Simmons was Alternate No.

mp8

2. She called at about 12.15 or 12.20. Her train was stopped because of a power failure. She could be in shortly, but I don't think so. I think she is going tobe in at least another half-hour or so. We will go on without her. I think we can get along with one alternate and discharge Alternate Simmons from this case. She is excused from this case. When she comes in, I will have the clerk instruct her to return to the juryroom.

Go ahead, Mr. Abzug.

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes, please.

MR. ABZUG: The government calls Charles Penker.

C H A R L E S P E N K E R, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Penker, how old are you, sir?

A 33.

Q Are you currently employed?

A No, I'm not.

Q What do you do with your time now, sir?

A I'm a student at Fordham University.

Q What are you studying, sir?

A I'm going for my Masters in Economics.

Q Did you receive an undergraduate degree?

A Yes, sir.

Q Where?

A Pace University.

Q How long were you an undergraduate at Pace University?

A Nine years, part-time and full-time from 1962 to May of '73.

THE COURT: What was the time?

THE WITNESS: 1962, September of '62, through May of '73, part-time and full.

Q During what time were you part-time, sir?

A From May of '70 through '73.

THE COURT: I am trying to get notes. What was the last thing you said?

Q Were you employed while you were a part-time student, Mr. Penker?

A Yes, I was.

Q Where, sir?

A At Carter Cab.

Q Where is Carter located?

A 5674 Marsholu Avenue, Bronx.

Q In what capacity were you employed, sir?

A As a cab driver.

Q Did you have a weekly salary?

A Yes, I did.

Q What was that, sir?

A Approximately $125 a week.

THE COURT: You keep your voice up and speak lower.

Q How was that salary computed?

A Based on a commission basis, a daily rate and a number of calls less commission.

Q What did your salary go for, sir?

A For my expenses at home and school.

Q You have to slow down and keep your voice up for the jury, please.

Do you know a man by the name of John Dinino?

A Yes, I do.

Q Is he in the courtroom today?

A Yes, he is.

Q Will you identify him for the Court and the jury?

A The gentleman sitting at the table, the desk (indicating).

MR. ABZUG: Let the record reflect, your Honor, that the witness has identified the defendant.

Q When did you first meet Mr. Dinino?

A At Carter Cab.

Q When, sir?

A I would say since '71.

Q What portion of '71?

A The spring of '71.

Q Could you describe the circumstances which led up to meeting the defendant?

A Yes. I was working at Carter Cab, and he would show up this one specific day and it was a Friday.

THE COURT: Take it slowly. He would show up?

THE WITNESS: Usually on a Friday.

Q Where, sir?

A At Carter Cab.

Q What, if anything, did you observe when he would show up at Carter Cab, sir?

A He was receiving money.

Q From whom, sir?

A From other drivers.

Q Did there come a time when you had a conversation with Mr. Dinino?

A Yes, I did.

Q When did this occur, sir?

A Approximately a month or two months after I was working at Carter Cab.

Q Where did this conversation occur, sir?

A In the office of Carter Cab.

Q What, if anything, did John Dinino say to you and you say to John Dinino?

A I asked John Dinino if I could possibly get a loan.

Q What did Mr. Dinino respond?

A "You have to wait about a week or so, and I'll let you know."

Q What time approximately did this conversation occur?

A I would say Friday afternoon between the hours of 5 and 7.

Q Following this first conversation with Mr. Dinino, did you see Mr. Dinino again?

A Yes, I did.

Q Where, sir?

A At Carter Cab.

Q When, sir?

A The following week.

Q Approximately what time?

A On a Friday afternoon between the hours of 5 and 7.

Q What, if anything, occurred at the second meeting?

A He said, "Yes, you can have the loan."

Q What,if anything, was passed between you, sir?

A $200 cash.

Q Did he explain the terms of the loan?

A Yes, he did.

Q What were those, sir?

A $26 a week for ten weeks.

Q To your knowledge at the time you received this loan, did John Dinino work at Carter Cab?

A As far as I know, no.

Q Following your receipt of this $200 loan, did you see Mr. Dinino again?

A Yes, I did.

Q When?

A Every Friday.

Q For how long, sir?

A For ten weeks.

Q What, if anything, would transpire when you would see Mr. Dinino on these weekly occasions?

A I would give him $26 a week.

Q Where would this take place?

A At Carter Cab.

Q Other than John Dinino did anyone else collect money from you?

A Yes.

Q Who was that, sir?

A A fellow named Vinnie.

Q Is the man you knew as Vinnie in the courtroom today?

A Yes.

Q Would you identify him for the jury?

A The gentleman sitting at the end of the table (indicating).

MR. ABZUG: Let the record reflect that the

witness has identified the defendant De Vito.

Q How did you first meet the man you knew as Vinnie?

A I was introduced through Johnny.

Q Where?

A At Carter Cab.

Q What was said at this introduction?

A If he wasn't there, to give the payments to Vinnie.

Q Who said this, sir?

A Johnny.

THE COURT: You mean Mr. Dinino?

THE WITNESS: Right, Mr. Dinino.

Q Subsequently did you see Mr. De Vito?

A Mr. De Vito?

Q After this introduction.

A Yes.

Q Where, sir?

A At Carter Cab.

Q Approximately what time?

A On a Friday usually between the hours of 5 and 7.

Q What, if anything, would transpire there, sir?

A I would give him a payment if John wasn't there.

Q Besides yourself did you see anybody else meet

Mr. De Vito at Carter Cab?

A Yes, other workers at Carter Cab, drivers.

Q Could you name those workers?

A I would say Phil Cassese, Ronald Levine, Sandy Ronson.

Q Following the repayment of this loan after ten weeks, did you see Mr. Dinino again?

A Yes, I did.

Q Where?

A At Carter Cab.

Q When, sir? What time of the year?

A It would be in the late summer of '71.

Q Did you have a conversation with Mr. Dinino?

A Yes, I did.

Q What did he say to you, if anything, and what did you say to him?

A I asked him for an additional loan.

Q In what amount, sir?

A $500.

Q What, if anything, did Mr. Dinono do?

A He said, "Yes."

Q What happened after that?

A He gave me the amount of money, $500, and told me the payments would be $50 a week for 15 weeks.

Q How did you receive this?

A In cash.

Q Did you receive it at this conversation?

A No. I think I waited until the next time I seen him.

THE COURT: The payments were what?

THE WITNESS: $50 a week for 13 weeks.

Q Following the receipt of $500 were you able to make the payments?

A Yes, I was.

Q Where did you get the money to make the payments, sir?

A From my income at Carter Cab.

Q When did you make the payments, sir?

A On the same procedure -- Friday afternoon between the hours of 5 and 7.

Q To whom did you make the payments?

A To either Johnny or Vinnie.

Q Who else, if anything, did you observe meeting Mr. Dinino during the summer of '71?

A I would see other drivers at Carter Cab.

Q Who, sir?

A The same names, Ronnie Levine, Sandy Ronson, Louis Materozzo.

Q Who else, if anyone, did you see meeting Mr. De Vito during the summer of '71?

A I would say the same people. Certain days he would be there, Vinnie would be there, and some days John would be there.

Q Directing your attention to the fall of 1971, did you overhear a conversation between Mr. De Vito and Mr. Phil Cassese?

A Yes, I did.

Q Where did this take place?

A The office of Carter Cab.

Q Who was there besides yourself, Mr. Cassese and Mr. De Vito?

A The other fellow cab drivers, myself and Sandy Ronson, I can't recall. Other people. I can't recall who they were.

Q Where were you standing when you overheard this conversation?

A I was outside the office.

Q Where were Mr. Cassese and Mr. De Vito standing?

A In the office itself.

Q What did Mr. Cassese say to Mr. De Vito, and what did Mr. De Vito say to Mr. Cassese?

MR. WALLACH: I object on the grounds it is

leading.

There is no proof here anybody said anything.

Q What did Mr. Cassese say to Mr. De Vito, and what did Mr. De Veto say to Mr. Cassese?

A Mr. Cassese says, "You are cheating me," and Mr. De Vito says, "No, I'm not cheating you." And words were exchanged, and somehow Mr. De Vito slapped Mr. Cassese in the face and his glasses fell off.

MR. WALLACH: I object. That is completely irrelevant and immaterial.

THE COURT: Overruled.

Q What did you do after that, sir?

A I left.

Q All during this did you make payments to Mr. De Vito?

A Yes, I did.

Q Did there come a time after the summer of '71 when you received another loan, sir?

A Yes, I did.

Q From whom?

A John Dinino.

Q Why, sir?

A I needed additional money. I had schooling and I had problems at home with family.

Q When did you receive this other loan, sir?

A Can I refer to the paper?

Q Is there a statement that would refresh your recollection?

A Yes, there would be.

Q What is that statement, sir?

A What time I got the loan, what period of time.

MR. BLAUSTEIN: If your Honor please, if this is a statement of a prior hearing that was held, I don't think it is competent, but if it is his own statement that he had some prior recorded notes on, then it is another thing.

Can we know what kind of a statement this is?

MR. ABZUG: I plan to mark it for identification and show it to counsel. This is to refresh recollection.

THE COURT: This is being marked for identification. You will see it, Mr. Blaustein.

xx (Government's Exhibit 2 marked for identification.)

MR. BLAUSTEIN: I object to this, your Honor, on the grounds stated originally, that this is his testimony in the grand jury, and I think it is --

THE COURT: It is not being offered. The U.S. Attorney simply wants to use this to refresh someone's

mp21 Penker-direct

recollection.

He can use anything at all to refresh recollection. Let's go, Mr. Abzug. You lay a foundation for using it for the purpose you said, okay?

MR. ABZUG: Fine, your Honor.

THE COURT: But you have to lay a foundation for that, right?

MR. ABZUG: Yes, your Honor.

THE COURT: Okay.

BY MR. ABZUG:

Q Mr. Penker, do you recall testifying before the grand jury?

A Yes, I do.

Q Is that the document that you are referring to that would refresh your recollection, sir?

A Yes, it is.

THE COURT: I think you said this. You were asked when this third loan was made, right?

THE WITNESS: Yes.

THE COURT: And as you sit there do you remember when the third loan was made?

THE WITNESS: I remember the period, but I have a mental block. I don't remember what time of year.

THE COURT: Okay.

BY MR. ABZUG:

Q Showing you what has been marked as Government's Exhibit 2 for identification, does this document refresh your recollection as to when the third loan occurred, sir?

A Yes.

When did the third loan occur, sir?

A October of '71.

Q Did you have a conversation with Mr. Dinino?

A Yes, I did.

Q Where did that conversation occur?

A At Carter Cab.

Q Approximately what time of day, sir?

A I would say in the afternoon between the hours of 5 and 7.

Q What did you say to him and what did he say to you?

A I asked him -- I need an additional amount of money and he said, yes, I could have it.

Q What, if anything, did he give you, sir, if anything?

A $500.

Q What was your balance at this time, sir?

A It was approximately half-paid.

Q Which would be what, sir?

A Approximately a balance of about $250.

Q So what were your payments after you received this third loan?

A Still the amount of $50.

Q How would the terms for the payments change,if at all, sir?

A It would still be the same amount ofmoney, $50 a week for 13 weeks. I never received the full -- it was $250, the balance.

THE COURT: I am not getting you. You had received a $500 loan in the summer of 1971, right?

THE WITNESS: Right.

THE COURT: And you were paying $50 a week on that?

THE WITNESS: Right.

THE COURT: And that was to go for 13 weeks, right?

THE WITNESS: Correct.

THE COURT: And that if it had all been paid back, it would be $650.

THE WITNESS: Correct.

THE COURT: Now you are saying at some point when you still owed about $250 roughly --

THE WITNESS: Correct.

THE COURT: -- on that other loan, you asked for another $500, right?

THE WITNESS: Right.

THE COURT: You testified, but it is not clear in my mind, and did you add another amount on top of the $50 ybu were already paying so that you were paying $50 plus something per week?

THE WITNESS: No. I asked him for an additional $500. He said, "No, you can't have it. The limit is $500," and whatever the balance was on the original loan, plus whatever was given to me, brought the balance back up to $500.

THE COURT: In other words, you had a balance at that time.

THE WITNESS: Correct.

THE COURT: And you were given an additional amount of money to bring this up to $500?

THE WITNESS: Correct.

THE COURT: And then it was about $250 or something like that?

THE WITNESS: Something -- approximately that.

THE COURT: And then you were going to keep on paying $50 a week?

THE WITNESS: Correct.

THE COURT: How long would you keep paying the $50 a week?

THE WITNESS: For 13 weeks.

THE COURT: For another 13 weeks?

THE WITNESS: Correct.

THE COURT: Correct. Mr. Abzug, go ahead.

BY MR. ABZUG:

Q Recalling the receipt of this third loan from Mr. Dinino, did you see him again, sir?

A Yes, I did.

Q How often?

A Every Friday.

Q Where, sir?

A At Carter Cab.

Q What, if anything, would transpire?

A I would give him $50 a week.

Q Did anybody else collect $50 a week from you, sir?

A I would say Vinnie would.

Q Who would?

A Vinnie.

MR. WALLACH: I object to "I would say."

THE COURT: Overruled.

Q Did there come a time when your wages at Carter Cab increased, sir?

A Yes, it did.

Q When was that, sir?

A Early -- the following year I bought a car.

Q How much did you purchase the car for, sir?

A It was $100.

Q What kind of a car was it, sir?

A A stationwagon.

Q Did that change your wages at Carter Cab, sir?

A To use your own car, your own transportation, you got higher commission.

Q What commission would that be, sir?

A 75 per cent of driving and 25 per cent commission to the house.

Q Instead of what?

A Instead of 50 per cent to the house and 50 per cent to you, if you used the company car or the house car.

Q How did you get the money to purchase the car?

A I asked Johnny for an additional loan.

Q In what amount, sir?

A $500.

Q When did this loan occur, sir?

A In January of '71.

Q Sir, when did this loan occur?

A January of '71.

THE COURT: You said you bought the car in early '72.

THE WITNESS: '72. Pardon me. '72.

THE COURT: How much did you pay for the car?

THE WITNESS: $100.

THE COURT: And you were asked how you got the money for the car.

THE WITNESS: Correct.

THE COURT: Go over that again.

THE WITNESS: I asked Johnny for an additional loan.

BY MR. ABZUG:

Q In what amount?

A $500.

Q Where did you ask him?

A At Carter Cab.

Q Approximately what time of day, sir?

A I would say it would be on a Friday afternoon.

Q When did this conversation occur?

A Between the hours of 5 and 7 normally.

Q What time of the year, sir?

A In January of '72.

Q What did you say to him and what did he say to you?

A He said, "Yes, you could have it."

Q Up to March of 1972 had you missed any payment from Mr. De Vito and Mr. Dinino?

A Yes, I did.

Q How many, sir?

A I would say two or three.

Q Following the third loan in January of 1972, did there come a time when you borrowed from Mr. Dinino again?

A Repeat that question again.

Q Following the third loan in January of '72, did you borrow from Mr. Dinino again?

A Yes, I did.

THE COURT: Wait a minute.

MR. ABZUG: The third $500 loan, your Honor.

THE COURT: Let me get this clear. I thought we had a loan in the spring of '71 for $200.

THE WITNESS: Correct.

THE COURT: Then you paid that off, right?

THE WITNESS: Correct.

THE COURT: And then in the late summer of 1971 you borrowed $500.

THE WITNESS: Correct.

THE COURT: That was the second loan.

THE WITNESS: That's correct.

THE COURT: And then in October of 1971 we have what you would call a third loan when you had paid the balance down, and he raised it back up to $500, right?

THE WITNESS: Correct.

THE COURT: Then you said there was another loan in January of '72.

THE WITNESS: Correct. That was January of '72.

THE COURT: That was $500.

THE WITNESS: Correct.

THE COURT: Had you paid off the other loan by then?

THE WITNESS: Yes, everything was paid.

THE COURT: And were the terms of this, let's call it the fourth loan of January of 1972, were they again $50 a week for 13 weeks?

THE WITNESS: Correct.

THE COURT: All right, Mr. Abzug, go ahead.

BY MR. ABZUG:

Q Following the receipt of this loan in January of 1972, did you borrow from Mr. Dinino again?

A Yes, I did.

Q When, sir?

A I can't recall the dates. I ask again to refer to the paper.

Q Can you approximate?

A I don't remember.

Q Is there a document that would refresh your recollection?

A Yes, there is.

Q What document is that?

A My testimony to the grand jury.

(Government's Exhibit 3 marked for identification.)

xx

Q Showing you what has been marked for identification only as Government's Exhibit 3, does that document refresh your recollection as to when the next loan from John Dinino occurred?

A Yes, it does.

Q When, sir?

A The summer of '72.

Q Where did you meet Mr.Dinino?

A Carter Cab.

Q Did you have a conversation with him?

A Yes, I did.

Q What, if anything, was said?

A I asked him -- I needed a loan for $500.

Q What did he respond?

A He said, "Yes, you could have it."

Q Did he explain the terms of the repayment to you?

A Yes, he did. The loan was for $50 a week for 13 weeks.

Q How long did your automobile that you purchased function, sir?

A It broke down in the early fall of '72.

Q What happened then, sir?

A What happened -- I was rear Johnny's Gas Station. I called him, and he said to bring the car over. I brought the car over and it was literally pushed into the gas station.

THE COURT: Johnny's Gas Station?

THE WITNESS: Mr. Dinino's gas station.

THE COURT: Your car broke down and you called Johnny and Johnny said to bring it to the gas station?

THE WITNESS: Yes, to try and fix it.

Q Once you arrived at the gas station, what happened?

A He got a mechanic there and looked it over. It needed a whole new engine.

Q Did you have a conversation with Mr.Dinino

about the payment of the repair, sir?

A Yes. He said to me that I can make it out in installments. It was over $300 for the repairs of the car.

Q Howwere these installments to be paid?

A Pay him back in weekly installments.

Q Do you recall how much the installments would be, sir.

A Approximately $50 a week. I said that I'd try to pay it off in six or seven weeks.

Q Following the repair of the car did you see Mr. Dinino again?

A Yes, I did.

Q When, sir?

A At Carter Cab Friday afternoons.

Q What, if anything, would transpire between you two?

A I would make the payment to him on the loan, and plus the repairs of the car.

Q How much would this be, sir?

A $50 for the loan and $50 for the repairs of the car.

Q How long were you able to make these $100 payments every week?

A Up to December of '72 I couldn't make it. I couldn't make the payments. It was getting too much.

Q Did you have a conversation with Mr. Dinino around that time, sir?

A Yes, I did. I asked him -- and I said, "This is getting out of hand. I can't pay it."

He said, "You have to pay the interest charge to make the payments" --

MR. BLAUSTEIN: Excuse me, your Honor.

THE COURT: Go on, Mr. Abzug.

Q What did you understand he meant by interest payments, sir?

A A penalty charge, $10 a week.

Q Would this penalty charge of $10 a week reduce the principal of your loan, sir?

A No. Just a surcharge or whatever you want to call it.

Q After this conversation did you make any penalty payments?

A Yes, I did.

Q To whom, sir?

A To Johnny.

Q How long did you make these penalty payments?

A I would say three payments tops of the $10,

because I was able to make the payments. One week I couldn't, and then I could make the payments.

Q Where would these payments be made, sir?

A At Carter Cab.

Q What happened after that, sir?

A I didn't see Johnny for a while, and the latter part of January of '73 he shows up. I asked him about the balance on everything. He said, "$300," and I said, "No, I think you are wrong. I feel it is only $100."

Q What did he respond, sir?

A He said, "I want all my money in." He said, "I'm getting out." And he said, "Don't get me pissed off." And he was a changed person.

Q What did you do, if anything, sir, as a result of this conversation with Mr. Dinino?

A Well, I went to another loan shark or lender. I asked him for $200 so I could pay Johnny.

Q Who was this other loan shark?

A A man named Norman Ralsky.

Q How much did you borrow from Mr. Ralsky?

A $200.

Q Do you recall the rate of interest?

A $26 for ten weeks, I think it was.

Q What did you do with this money that you borrowed

from this loan shark?

A The next time I seen Johnny I gave him the $200 which I borrowed from the other man.

Q Why would you borrow from one loan shark to pay another, sir?

A I wanted Johnny off my back.

Q Following the payment of the $200 with Mr. Dinino, what happened after that, sir?

A I didn't see Johnny for a long time.

Q Did you pay any more vig payments?

A I didn't see him for about four months. Some time in May of '73 he shows up asking for an additional $100 balance, or something like that.

I says, "I don't have it."

He said, "You have to pay a penalty of $10."

Q How did you pay him the $10, sir?

A I didn't have it at the time, and the next time I got a money order, and I gave him a money order.

I put it in my wallet, so the next time I seen him I made sure I had it.

xx

(Government's Exhibit 4 marked for identification.)

Q Did you subsequently see Mr. Dinino after that?

A Yes. Again I did see him and, I think, in July

of '73.

Q What did you do with this money order?

A I gave it -- not to John, but to somebody else.

Q Do you recall what that person's name was?

A I don't remember his name. I think a friend of his or somebody, I don't know.

Q Can you identify in general terms what has been marked for identification only as Government's Exhibit 4, sir?

A Yes.

Q Could you tell the jury what it represents?

A It is a money order for $10 that I gave to somebody who came down representing Johnny, and it was a penalty cost for not paying the outstanding balance.

Q Is this the actual money order, sir?

A Not the actual one. It is the customer's copy.

MR. ABZUG: Your Honor, at this time the government moves for the admission into evidence of what has been marked for identification only as Government's Exhibit 4.

MR. PELUSO: I object to that.

THE COURT: Overruled. I will receive it.

(Government's Exhibit 4 received in evidence.)

Q Following the payment of this penalty did you

Mr. Dinino again?

A Yes, I did.

Q When, sir?

A It was early July of 1973.

Q Where did you see him again, sir?

A At Carter Cab.

Q Approximately what time?

A I don't recall. I would assume it wason a Friday.

I guess it would be on a Friday. The only time I usually see him would be on a Friday.

Q Did you have a conversation with him?

A Yes, I did.

Q What was the nature of the conversation?

A He wanted his money still outstanding on the balance.

Q What, if anything, did you do, sir?

A In haste I gave him one of my personal checks.

Q Do you recall the amount, sir?

Q For $50.

Q What, if any, instructions did Mr. Dinino give you with respect to that?

A I wrote the check out to J.D. Service Station.

xx

(Government's Exhibit 5 marked for identification.)

Q Showing you what has been marked for identification only as Government's Exhibit 5, can you, in general terms, identify this document?

A Yes. One of my personal checks that I gave Johnny in the amount of $50.

Q There is a notation on the corner, is there not, sir?

A Yes. In the bottom lefthand side of the corner it says "Repairs on an auto."

Q Can you explain that notation, sir?

A I put it down -- Johnny wouldn't take the check. I said to him that I would give it to him in check and on the memo put down repairs on the car.

Q Who said that?

A Johnny.

Q Had you repaid him the money on the car by that time, sir?

A Yes, it was paid for.

Q Is this the personal check you gave to Mr. Dinino?

A Yes, it is.

MR. ABZUG: Your Honor, at this time the government moves for the admission into evidence of what has been marked for identification only as Government's Exhibit 5.

MR. PELUSO: Objection as to my client, Judge.

THE COURT: Overruled. Exhibit 5 is received.

xx (Government's Exhibit 5 received in evidence.)

BY MR. ABZUG:

Q After you gave this check to Mr. Dinino, did you have another conversation with him?

A Yes. What happened was I gave him the check -- I had no money in the account, but I felt at this time I was leaving Carter Cab and the check bounced and he called me up.

I told him -- I said, "I definitely got the money." What happened was that I bought a money order again for the amount of $50 for the return of that check.

Q What did Mr. Dinono say about the check?

A He said it bounced and he wants his money.

I said, "I have it."

Q How soon after you gave him the check did this telephone conversation occur?

A A matter of four or five days, I guess.

Q What happened after that, sir?

A I bought a money order for $50 and replaced the check that was returned.

Q How long did you carry this money order around

on your person?

A It was for a few weeks.

Q Then what happened?

A Until I seen Johnny. And I gave him the money order.

Q Where, sir?

A At Carter Cab.

Q What, if anything, did you say?

A I said, "This is the money order for the returned check."

Q Did he receive the money order?

A Yes, he did.

xx (Government's Exhibit 6 marked for identification.)

Q Showing you what has been marked for identification only as Government's Exhibit 6, can you identify that document generally to the jury?

A Yes. It is a customer's copy of a money order purchase from the bank that I gave the original to Mr. Dinino.

Q Is this the copy of the original that you gave to Mr. Dinino?

A Correct. That's the customer's copy.

THE COURT: Are you offering it?

MR. ABZUG: Yes, your Honor.

MR. PELUSO: Same objection.

THE COURT: Overruled.

MR. BLAUSTEIN: No objection.

xx (Government's Exhibit 6 received in evidence.)

MR. ABZUG: The government has no further questions of this witness, your Honor.

THE COURT: All right. You may cross-examine.

CROSS EXAMINATION

BY MR. BLAUSTEIN:

Q Mr. Penker, the moneys that you borrowed from Mr. Dinoni that you described in detail to the jury, was that the first time that you ever borrowed money from a private lender?

A Yes, it was.

Q You never borrowed from a private person before?

A No.

THE COURT: Why do you have to ask the same question twice? If he says he did not borrow it from a private lender, he didn't borrow it.

Let's move along.

Q Mr. Penker, are you a gambler?

A No, I'm not.

Q You don't bet on horses?

A No, I don't.

Q Did you ever own a horse?

A No.

Q Did you ever give anybody tips on horses?

A Once in a while. I have a friend of mine who is a horse trainer.

Q What significance does that have?

A A friend of mine -- I went to school with him and he is a Spanish fellow from Argentina. He knew horses. He trained horses.

Q As a result of your friendship with this man, did you get tips on horses?

A Once he told me about a horse that was running.

Q Did you ever give Mr. Dinino a tip on the horses.

A I don't remember. As far as I know, I don't remember.

Q You were interviewed by agents of the Federal Bureau of Investigation on October 18, 1973, do you recall that?

A Say the date again, please.

Q October 18, 1973.

A I assume I was. If you say so.

I don't recall the date.

Q Didn't you see Special Agent Michael --

THE COURT: He is not denying it. He says he will take your word for it.

Let's go ahead.

Q Did you recall to them the events as you detailed them here in court?

A I assume I did, because I went to the grand jury. I don't know if this is referring to the grand jury. I don't recall the meeting you are talking about.

I recall meeting with agents, yes, at certain times.

Q Prior to going to the grand jury did you discuss your testimony with agents of the FBI?

A Discuss -- you mean -- I was interviewed, yes. They asked me what happened.

Q Did you tell them what happened?

A Yes, I did.

Q Did you tell them all the detailsas you gave them here in court?

A Yes. And I told them too in front of the grand jury. I told the agents and in front of the grand jury. Whatever I said to the grand jury, I told the FBI agents what had happened.

Q Did you tell the FBI at any time that no threats

were made to you?

A There was no threats ever made to me, no.

Q You went to Mr.Dinino to get help for your finances, didn't you?

A Yes, I did.

Q And from time to time he helped you as you described here.

A Correct, he did.

Q You continually went back over a period of how many years?

THE COURT: What do we need this for? I assume there is no controversy that you are trying to raise about the fact that he went for loans.

Why do we have to have it repeated?

MR.BLAUSTEIN: Your Honor, this is cross-examination.

THE COURT: It is cross, but I don't have to sit here endlessly having cross that yields no result.

There is no right on cross-examination to take up the time of the Court and the time of the jury. It does not mean that you have to go on.

If you have a point to bring out, that is different, or supplementary to what was brought out on direct. If you simply want to have the direct repeated,

that is unnecessary.

MR. BLAUSTEIN: I have to ask that question to go on to the next one.

THE COURT: Get to the next question.

The jury has this testimony in mind pretty well.

BY MR. BLAUSTEIN:

Q During the period that you borrowed money, was your relationship with John Dinino amicable?

A I would say yes.

Q It was friendly?

A It was basically.

Q And the time came when your car broke down and you went to see John Dinino.

A Correct.

Q Did you go to see John Dinino at that time because he was loaning you money, or did you go to see him for some other reason?

A No. I'll tell you a story. I had my car up there one time before for minor repairs. He had a good mechanic, and also the time the car broke down, I was near his gas station.

Q Where is that?

A Ramapo, New York, or Spring Valley.

Q Is that in Rockland County?

A Yes, it is.

Q How far from New York?

A 40 minutes. I don't know. Something like that.

Q Would you describe for the jury what that service station looked like?

A Very large, a good-run station. I don't know -- four or five pumps, two bays.

Q Do you know what that station was called?

A I imagine J.D. Serv'ce Station.

Q J.D. as far as you knew was John Dinino?

A I guess so.

Q He was the owner?

A I assume he was, yes.

Q Did you see him work there?

A Yes.

Q How was he dressed?

A Work clothes.

Q Did he work as a mechanic?

A No, he didn't.

Q Did he pump gas?

A No, he didn't.

Q Did he take care of the operations of the station?

A Yes, as far as the money. He collected money

for the receipts, you know.

Q Did he direct the employees there?

A Yes, he did.

Q He was the man in charge?

A Yes.

Q At what hours did you see him there?

A I was only there twice. Both times it was in the afternoon. The first time I went there, it was minor repairs on the car. The second time the car broke down completely, and I was there in the afternoon.

Q What kind of repairs were performed on the car?

A Almost a new engine. I don't know -- the crankshaft and things like that.

Q Other things that he did for you?

A In the repairs of the car, yes.

Q Did you know other people who took cars there for repairs?

A I don't know any person. I don't know -- maybe one or two of the drivers. I don't know. I don't remember. I remember somebody going up there once before for a repair on their car.

Q It was known that he was in the auto repair business?

A Yes.

Q And he wore overalls and he worked there?

A Yes, he did. He did work there. Both times I was there he was there.

Q Mr. Penker, you described for us at least five or six loans that Mr. Dinino allegedly made to you.

A Yes.

Q In your conversation with the FBI on October 13th, are you under the impression that you told them about all those loans?

A Yes, I did. Prior to that and even before that I told them the testimony at the grand jury in early October of '73, as I recall.

As I said, the date does not ring a bell in my mind. I don't know which date it was. Are you referring to grand jury?

Q No. I am referring to the statement you gave to the Federal Bureau of Investigation.

MR. BLAUSTEIN: I ask that this be marked for identification.

xx (Defendants' Exhibit B marked for identification.)

THE WITNESS: Your Honor, this thing he is referring to, I don't know what he is talking about.

Q Look at Defendants' Exhibit B for identification,

and see whether that refreshes your recollection.

THE COURT: On what?

MR. BLAUSTEIN: On conversations he had prior to his grand jury testimony with the FBI agents.

MR. ABZUG: I object to the form of the question, your Honor.

THE COURT: I don't think he has denied that. Let's go to another question.

What are you driving at?

MR. BLAUSTEIN: May I approach the bench?

THE COURT: Keep on. Let's get this cross-examination concluded. What is your point?

MR. BLAUSTEIN: My point is this. After the interview he had with the FBI --

THE COURT: Ask him questions about what you want to bring out.

BY MR. BLAUSTEIN:

Q On October 18, 1973, did you tell the FBI about all the loans that you made from Mr. Dinino?

A Prior to this date? Prior?

Q No. On that date.

A Yes. As I said, it is written there.

Q You say it is contained in the statement?

A From what I can see, yes.

MR. BLAUSTEIN: I offer the statement in evidence.

MR. ABZUG: Your Honor, it is not shown to be inconsistent. It is not inconsistent, your Honor. The statement is being offered without foundation.

That is the statement of an FBI agent, your Honor.

THE COURT: May I see it, please?

MR. BLAUSTEIN: I will withdraw the offer, your Honor.

THE COURT: Okay. That's settles it.

MR. BLAUSTEIN: I have nothing further, your Honor.

THE COURT: Mr. Peluso.

CROSS EXAMINATION

BY MR. PELUSO:

Q Before taking the stand to testify today, Mr. Penker, did you discuss this case with the U.S. Attorney?

A Yes, I did.

THE COURT: I think t. ury can assume that. We do not have to spend this time. They can assume that each witness has discussed the case with the United States Attorney unless we are told otherwise.

It would be madness not to do it.

Q Did you also, Mr. Penker, refresh your recollection by looking at some notes of prior testimony?

A Prior testimony to the grand jury.

Q And your testimony here in court today, is this as a result of your recollection having been refreshed?

A Yes.

Q Am I correct that you used your grand jury testimony of December 10, 1973, in order to refresh your recollection?

MR. ABZUG: That has been asked and answered, your Honor. Objection.

THE COURT: Overruled.

A Referred to my testimony of December 10, 1973 -- I had to, I would assume. I made not one but two appearances, I think, in front of the grand jury.

Q Well, it was that testimony that you used to refresh your recollection?

A I assume it is one of the two.

Q I see. Did you testify here this morning --

THE COURT: This afternoon.

Q This afternoon, that when you first met Vinnie De Vito you met him with the defendant John Dinino?

A Correct.

Q And this meeting took place where?

A At Carter Cab.

Q I see. And it was at that meeting that John Dinino said something to you about Vinnie, is that right?

A Correct.

Q What did John Dinino say to you about Vinnie?

A It was my -- "This is my partner," and if Johnny wasn't here, to give the money to Vinnie.

Q Was this your earlier testimony?

A Yes, it was.

Q That he was his partner?

A No, it wasn't.

Q This is something that you added?

A Well -- I'm adding it. Yes, I am.

Q You have a vivid recollection that it was John Dinino who told you, "If I'm not here, give it to Vinnie"?

A Correct.

Q And you have this recollection because you refreshed your recollection?

A No. I studied it in the grand jury testimony. In my first appearance I stated it.

Q Did you on any earlier occasion testify that you could not recall if Johnny told you that if he wasn't there to pay Vinnie?

THE COURT: If you have the earlier testimony,

read it to him. Let's not waste time in this way.

MR. PELUSO: I will read from the grand jury testimony of December 10, 1973, page 5 --

THE COURT: Read it.

Q Were you asked these questions --

THE COURT: What is the date of the grand jury?

MR. PELUSO: December 10, 1973.

THE COURT: Go ahead.

Q "Q Did Vinnie tell you he was collecting for John, or did John tell you to pay Vinnie?

"A I can't recall if Johnny told me if he wasn't there to pay Vinnie," and did you so testify?

A I'm saying I don't recall. Now, I do recall, because I feel it was when one or the other was there, and I gave one or the other money.

Q Did you so testify?

A I must have.

Q May I finish the question? Did you so testify in December, December 10, 1973?

A I must have.

Q On that occasion you could not recall, is that right?

THE COURT: Look, we don't have to belabor this. He is not denying the testimony. The jury has heard him.

All you have to do is simply read the testimony.

Really, if you tell us that this is what the testimony says, and unless the witness denies it, that is the testimony before the grand jury. Go on to something else.

MR. PELUSO: That is the question, did he so testify.

THE COURT: Go on to something else. He has not denied it.

What is the next point?

BY MR. PELUSO:

Q You used this testimony where you stated that you do not recall to refresh your recollection, is that correct?

MR. ABZUG: Objection.

THE COURT: Is there an objection? Let's go to another point.

The jury knows that he used some of his grand jury testimony to refresh his recollection.

Q What you did then was to use testimony wherein you said you could not recall in order to refresh your recollection and come here today and give a specific answer --

MR. ABZUG: That is not what he said. It is

argumentative.

THE COURT: Yes. You can argue it to the jury. Do not argue with the witness.

If you have any additional points to bring out, go ahead. If not, may we conclude this?

Q Did Vinnie ever threaten you?

A No way.

Q Did Vinnie ever use violence on you or towards you?

A Never did. I just said "No" before.

Q Is it not a fact that you were repaying the loans to Mr.Dinino in order to have good credit in the event you ever needed additional money?

A It is good theory, yes.

MR. ABZUG: I move that answer be stricken, your Honor.

THE COURT: Well, it is harmless. Go ahead.

Motion denied. Is there anything else? Do you have any further questions?

Q By the way, you testified as to an incident involving Mr. De Vito and Mr. Cassese, is that right?

A Yes, Cassese.

Q You say that was about five or seven p.m.?

A It was in the afternoon, I know that.

Q And you were inside of the cab place, is that right?

A I was outside by the door, but the door was open. I walked in and the noise started.

Q Were you outside by the door or were you inside?

A I was by the door, you know, just by the door and standing by the door. The door was open.

Q Would I be correct that you did not hear the entire conversation that took place between Mr. Cassese and Mr. De Vito?

A I assume you would be right.

Q You heard some words?

A I heard words.

MR. PELUSO: I have no further questions, your Honor.

THE COURT: Is there any redirect examination?

MR. ABZUG: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Penker, at the time that you were having difficulty making payments on your loans, did you meet with Mr. Dinino or Mr. De Vito?

A Mr. Dinino.

Q You have said or you testified, sir, that generally you were on a friendly basis with Mr.Dinino, is that correct?

A A business basis.

Q You testified also at some point that you were actually friendly with him, is that correct?

A I would say yes.

Q Did there come a time when you were no longer friendly with him?

A I said he was a changed man when I testified.

MR. BLAUSTEIN: I object to this, your Honor.

THE COURT: The objection is overruled. Is that the end of your answer?

THE WITNESS: Yes.

Q Why did you think he was a changed man, sir?

MR. PELUSO: Objection.

THE COURT: You can ask how he appeared or what manifestations he gave. That is what you can ask.

Q What did the defendant do to make you think he was a changed man?

MR. WALLACH: Objection.

THE COURT: Overruled.

A Well, just by his expression. He looked worried, you know, excitable, and you could not talk to

mp58 Penker-redirect

him.

Q Did he say anything to you?

A "Don't get me pissed off. I want my money back."

Q As a result of that you borrowed from another shylock?

A Yes, I did. I wanted him off my back. He was different.

MR. ABZUG: No further questions.

THE COURT: You may step down.

We will take a short recess.

(Witness excused.)

(Recess.)

(In the robing room.)

(All counsel present.)

THE COURT: I hear you have an application.

MR. ABZUG: Your Honor, I wish to proffer the following facts: At the recess Mrs. Dinino was carried out on either arm sobbing and weeping. I think her conduct, if it occurred in open court, would be prejudicial to the government and defendants' case perhaps. In any event, I would make an application to exclude her.

THE COURT: She apparently is pretty upset.

MR. BLAUSTEIN: She showed emotional strain for

mp59

the first time. I told her she is not doing herself any good and her husband any good, and that she should be a tower of strength at this time.

She has promised me that she will behave. I prefer that she not come back, but I would hate for your Honor to put a prohibition on her.

THE COURT: I do not want to prohibit her, but do you think she has calmed down now?

MR. BLAUSTEIN: Let me ask. If she is not, I will tell her it is in my best judgment and the Court's that she not come back.

THE COURT: I think the best way to handle this is that you go out and just as a matter of course go back and speak to her.

If you see or think there is any problem, we can have a side bar, but I will be out in three or four minutes.

(Jury entered the courtroom.)

mp60

P H I L I P C A S S E S E, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Cassese, is it Casses or Cassese?

A Cassese.

Q Where do you currently reside, sir?

A 6555 Broadway in the Bronx.

Q How old are you, sir?

A 62.

Q Mr. Cassese, directing your attention to the years 1970 to 1973, were you employed, sir?

A Yes. I was working part-time.

Q Where, sir?

A Which year?

Q Well, in 1970 where were you employed, sir?

A I was employed at Mosholu Avenue.

Q By whom, sir?

A Carter.

Q Directing your attention to the year 1971, were you employed then, sir?

A I believe I was with the same people.

Q How about 1972, sir, were you employed then?

A I was, yes.

Q By the same business?

A Right.

Q How about 1973, sir?

A I got sick. I suffered a mental breakdown.

Q Do you know a man by the name of John Dinino, sir?

A I do.

Q Is Mr. Dinino in the courtroom today, sir?

A He is.

Q Would you identify him to the jury?

A Well, the gentleman in the brown jacket.

MR. ABZUG: Let the record reflect that the witness has identified the defendant, your Honor.

THE COURT: The defendant Dinino.

MR. PELUSO: Judge, I object to that. With all due respect -- he said that it was the gentleman in the brown jacket.

THE COURT: Well, I do not think there is -- what is the problem?

MR. ABZUG: Perhaps we should clarify that.

MR. PELUSO: The problem is that the gentleman in the brown jacket is not Mr. Dinino.

THE COURT: Apparently we have a color problem,

but the room is dark.

Which man are you talking about in this room?

THE WITNESS: The gentleman sitting in front of Abzug, Mr. Abzug.

THE COURT: Does he have a tie on or sportshirt?

THE WITNESS: No tie, a sportshirt.

THE COURT: The light sportshirt with the figures on it?

THE WITNESS: Yes, sir.

THE COURT: There is no problem.

BY MR. AGZUG:

Q Did there come a time, Mr. Cassese, that you borrowed money from Mr. Dinino?

A I did. I was unable to borrow from other sources. The banks turned me down.

Q Approximately over what period of time did you borrow money from Mr. Dinino?

A Well, I have no idea. I can't remember the time. Probably about a year or so.

Q Was it while you were working at Al's Taxi, sir?

A No. I was working at Carter.

Q Was it while you were working at Carter, sir?

A Yes, sir.

Q Mr. Cassese, do you recall testifying before the grand jury?

A Yes. I think I remember that.

Q Mr. Cassese, do you recall giving the following responses, the following answers to the following questions --

MR. BLAUSTEIN: I object to this, your Honor. It is improper.

MR. PELUSO: Objection.

THE COURT: I do not know the purpose.

Do we have to have a side bar?

MR. ABZUG: Your Honor, there is --

THE COURT: Is this refreshing recollection?

MR. ABZUG: Where there is inconsistency with his grand jury testimony, your Honor.

THE COURT: Is it essential?

MR.ABZUG: It is to the government's case, your Honor.

THE COURT: I will permit it.

MR. WALLACH: The witness did not say he could not recollect.

MR. PELUSO: And no inconsistent testimony at this time, your Honor.

THE COURT: Let me see what you are talking about, Mr. Abzug.

MR. ABZUG: This, your Honor (handing).

THE COURT: Mr. Cassese, you said that you borrowed from Mr. Dinino over the period of about a year.

Is that something you are sure of?

THE WITNESS: Well, I'm not too sure about the time because in 1972, the latter part of '72, I was under the care of a psychiatrist.

I had a nervous breakdown. I was under heavy medication.

THE COURT: I will allow you to use this to try to refresh recollection.

MR. ABZUG: Thank you, your Honor.

THE COURT: You do not have to have it marked for identification. Just use it.

BY MR. ABZUG:

Q Mr. Cassese,showing you a portion from your grand jury testimony on page 8, grand jury testimony of March 7, 1975, and directing your attention to lines 13 through 16, does this refresh your recollection, sir, as to how long you owed money to Mr. Dinino?

A A period of three years?

Q Is that your testimony, sir?

A I don't remember that.

Q It does not refresh your recollection, sir?

A No, sir.

Q Mr. Cassese, do you recall giving the following answers to the following questions to the grand jury --

MR. BLAUSTEIN: Objection to this, your Honor. He said he does not remember. He read that.

THE COURT: Can't he use it on another basis? Is there an objection?

MR. BLAUSTEIN: Yes.

THE COURT: What is the basis?

MR. BLAUSTEIN: That he already answered the question.

THE COURT: Can't prior inconsistent testimony be read? Can it or can't it?

You are the one making the objection. What is the rule?

MR. BLAUSTEIN: I say it was read and he said that it does not refresh his recollection. For Mr. Abzug to read it again --

THE COURT: It was not read to this jury. The government's attorney wants to read the grand jury testimony as being inconsistent with what he says here.

Can he or can't he do it? What is the objection? What is the rule?

MR. BLAUSTEIN: I object to reading something

not in evidence to the jury.

THE COURT: What is the rule?

MR. BLAUSTEIN: You cannot read to the jury something not in evidence.

MR. WALLACH: Your Honor, may we approach the bench?

(At the side bar.)

MR. WALLACH: Your Honor, aside from the new rules of evidence, the question of confrontation over here -- this witness here is going to be examined now as to what he said to the grand jury.

We cannot cross-examine him because he does not recollect. In the other cases --

THE COURT: What is the reference to the new rules?

MR. WALLACH: Pure hearsay, your Honor, and no probity. What he said at the ex parte proceeding before the grand jury --

THE COURT: Can't you impeach him?

MR. ABZUG: He testified, your Honor, and it is prior inconsistent testimony under the Federal Rules.

THE COURT: Can you impeach your own witness?

MR. ABZUG: Of course you can.

MR. WALLACH: He is not a hostile witness.

MR. ABZUG: The defense has been doing this all through the trial, your Honor.

THE COURT: Get some authority and tell me about it.

MR. WALLACH: Your Honor, there is a case in this Circuit, U.S. v. DeSisto --

MR. ABZUG: Rule 607 of the Federal Rules of Evidence, your Honor, says that you can impeach your own witness.

DeSisto is a case referring to unsworn testimony, your Honor.

MR. WALLACH: A case involving the sworn testimony, and it favored the government.

It came as a surprise to the government. This is no surprise.

THE COURT: Is this offered solely for impeachment or is it offered for its substantive weight or what?

MR. ABZUG: Offered for its substantive weight, your Honor, and under DeDisto we can do that.

THE COURT: Can you just wait a minute. I cannot get one person to finish before the other one gets so excited and starts up.

What is the government's theory?

MR. ABZUG: The government's theory is that the government puts on the witness, and under the new Federal Rules we do not have to vouch for its credibility. The witness testified he received loans from John Dinino for one year. In the grand jury and under sworn testimony he said that he borrowed from John Dinino for three years. I am offering this as substantive evidence.

THE COURT: What is the authority?

MR. ABZUG: Under the De Sisto case, your Honor, and sworn testimony offered to impeach the witness, and we are entitled to argue to the jury that the statement of sworn testimony before the grand jury is the truth stated, and that they should disregard his testimony at trial. That's the De Sisto case.

THE COURT: You are offering this to impeach his testimony?

MR. ABZUG: Absolutely.

THE COURT: Solely?

MR. ABZUG: And for substantive purposes.

THE COURT: I do not have the De Sisto case sitting here, nor did I memorize it.

Are you telling me that the De Sisto case permits you prior grand jury testimony of your own witness for its substantive effect?

MR. ABZUG: Yes. The whole thing.

THE COURT: What do you say?

MR. WALLACH: I remember the case. I think that was a retrial. One of three leading witnesses in a hijacking case denied that the defendant was present during the hijacking. The U.S. Attorney then took his grand jury testimony and got it in evidence. It was used in evidence because it was sworn and it was grand jury, but the witness in the De Sisto case -- this man says he does not remember, and they want to bring in the grand jury testimony. How can we cross-examine this man as to what he said before the grand jury? He couldn't remember.

THE COURT: He could not in the De Sisto case.

MR. WALLACH: In the De Sisto case he changed his testimony.

THE COURT: But you concede in the De Sisto case he permitted the grand jury testimony to be introduced for the substantive effect.

MR. WALLACH: No question about it, because the witness changed his testimony at the retrial.

MR. ABZUG: May I say something, your Honor?

MR. WALLACH: Excuse me a moment. May I continue, Judge?

It is a question here, and not withstanding

the new rules of confrontation of evidence, but how can we cross-examine this man? We cannot cross-examine. They can cross-examine the witness all they want to.

THE COURT: I have to read the De Sisto case. We have trial time going on and on. You can certainly use it for impeachment.

MR. ABZUG: May I make the suggestion, your Honor, and clearly we can use it for impeachment, and we will take the testimony now and you can take a look at the De Sisto case and render an appropriate instruction after your Honor has read the De Sisto case.

THE COURT: The main thing is that if you go into the thing step by step with him, this general characterization as to the time period, it will probably wash out anyway.

MR. ABZUG: One final point, your Honor. I have been unable to meet with this witness before trial. I met with him once in grand jury. I met with him for ten minutes yesterday.

His testimony, the nature of his testimony today is a surprise to me.

THE COURT: Okay.

(In open court.)

BY MR. ABZUG:

Q Mr. Cassese, do you recall giving the following answers to the following questions:

"Q In approximately what periods did these loans occur over a period of approximately three years between 1970 and 1973?"

Your answer, "I would say about three years."

Do you recall giving that testimony to the grand jury, Mr.Cassese?

A No, I don't.

MR. ABZUG: Your Honor, would you deem that admitted into evidence?

MR. WALLACH: I object. These remarks are not necessary, Judge.

THE COURT: For some reason, ladies and gentlemen, we are all tied up on some questions of evidence here.

I am going to ask you to go on and try to develop the testimony in more detail. Let's not pause forever on this blanket question and how long he said it was before the grand jury or hear that he overall made the transactions.

Get to the details, and see if it solves itself.

MR. ABZUG: Yes, your Honor.

BY MR. ABZUG:

Q Approximately how many loans during this period, Mr. Cassese, did you take from Mr.Dinino?

A I really don't remember, sir.

(Government's Exhibit 7 marked for identification.)

BY MR. ABZUG:

Q Mr. Cassese, showing you what has been marked for identification only as Government's Exhibit 7, and directing your attention to the third paragraph down, I would like you to read that paragraph and tell the Court and jury whether that refreshes your recollection as to how many loans you received from Dinino from 1970 to 1973.

A I don't remember making these statements, sir.

Q Does that refresh your recollection, sir?

A No, sir.

THE COURT: Let's see what memory he does have. A lot of times people don't remember the entire time periods or totals of transactions, but take it step by step and do the best we can.

You do remember knowing Mr. Dinino, right?

THE WITNESS: Yes, Mr. Dinino.

THE COURT: All right.

Q How many loans did you take from Mr. Dinino, sir?

THE COURT: Do not start that route again. Just try to take it step by step, and see in his words what he remembers about, if anything, dealings with Mr. Dinino.

Q Did you have a conversation with Mr. Dinino when you received these loans, sir?

A I think I did, yes.

THE COURT: Please. How do you remember it, Mr. Cassese? You did make some loans from Dinino, right?

THE WITNESS: I made one loan. One loan I can say I made.

THE COURT: You just describe what happened. How did it come about, what is your memory as best you can recall?

THE WITNESS: That goes so far back and I have been under medication for over three years. My memory is really in bad shape.

It never was in good shape before these three years. I was under medication and for some reason or another, I have very little recollection.

THE COURT: What recollection do you have?

THE WITNESS: I know Mr. Dinino. He helps me

out one time. I needed some money to pay a few things that were overdue.

I tried to get a loan from a bank. I was turned down. Somebody mentioned that he had a friend whom I might be able to borrow from. I think that's the way it happened.

THE COURT: I'm sorry, Mr. Abzug. Go ahead.

MR. ABZUG: Thank you, your Honor.

Q Approximately how much was this loan, sir?

A It might have been close to $500. I can't be exact.

Q Approximately $500, then. What were the rates that you had to pay back, sir?

A Well, the understanding, I think, and I'm not too sure, that I would pay him back as I accumulated some money, and as I was able to work. When I finally paid him off that I could sort of give him something for his being so generous.

Q Interest on the money?

A I could not say whether it was interest. If I borrow money from somebody, I pay them back what I borrowed and give them an extra $50 as a sign of appreciation. I don't know if you can term that as an interest payment.

Q We will let the jury make that determination.

MR. WALLACH: I object to these remarks.

THE COURT: Yes. Mr. Abzug, get to the point.

Q Who did you make the payments to, sir?

A The person that gave me the money.

Q Mr. Dinino?

A Yes, sir.

Q Did you give payments to anyone else, sir, on Mr. Dinino's loans?

A I can't remember. All I remember is Mr. Dinino. He is the man that I approached.

xx (Government's Exhibit 8 marked for identification.)

MR. WALLACH: I renew my objection, your Honor, to the matter that --

THE COURT: We just had something marked for identification.

Do you object to that?

MR. WALLACH: I do not object to that.

Q Showing you what has been marked for identification only as Government's Exhibit 8, and directing your attention to page 8 of your grand jury testimony, lines 7 to 12, does that refresh your recollection as to whether you made repayments on the loan that you received from John Dinino to any other individual?

A No, sir, I can't say that this definitely in any way refreshes my memory.

Q Mr. Cassese, do you recall giving the following responses to the following questions to the grand jury --

MR. PELUSO: Your Honor, I respectfully object to the questions being asked and the answers being elicited.

THE COURT: I think what we better do, and I will have to read that De Sisto case, and I think we better have-- I do not think we can get very far with this witness until we resolve that legal problem. I am going to ask Mr. Cassese to wait and we will interrupt his testimony.

You wait in the witness room, and we will get the De Sisto case. In the meantime, we will go on with another witness.

What is the citation?

MR. WALLACH: I don't know, your Honor. I believe it is in the annotations.

Your Honor, it may be under Rule 801.

Your Honor, to save time may we approach the bench?

(At the side bar.)

MR. WALLACH: Your Honor, it was 801,2 and 3 of the Rules of Evidence, which stated that the ability

of the other side to cross-examine the witnesses.

THE COURT: This is the point you make. Why can't we read the case?

MR. WALLACH: Your Honor, this involves the De Sisto case. We are off on another case. We have to have the right to cross-examine this witness.

The De Sisto case, and these rules that embody that, speak about the witness being subject to cross-examination. We cannot cross-examine this witness because he does not remember anything. We cannot cross-examine what he said before the grand jury because we were not there.

THE COURT: Let's go on with another witness. Read this case that you yourself brought up and see what it is. We will try to get it out and we will go ahead with another witness.

MR. ABZUG: I believe, your Honor, that according to counsel's theory, it would be impossible to impeach a witness that failed to remember.

THE COURT: The impeachment does not do you much good because here is a witness that says he does not remember, and then you impeach him. It is highly misleading to the jury.

You have to have testimony from him.

MR. ABZUG: Not at this juncture, but I am entitled to first of all cross-examine or introduce a sworn statement of what he says he does not remember for substantive proof.

THE COURT: You say that, and I want to have a basis. That could be a very important count.

MR. ABZUG: You are right. I want to make my position clear.

THE COURT: The count of the whole case as far as this witness is concerned may depend on your ability to use that testimony. It is very important. We will go and I will try to look at that case.

Get another witness.

(Witness temporarily excused.)

mp79

S A M U E L H E R S H K O W I T Z, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Hershkowitz, are you currently employed, sir?

A No.

Q What is your present level of income, sir?

A I'm on Social Security Disability.

Q Were you employed in the year 1969, sir?

A Yes.

Q How were you employed, sir?

A I worked for Al's Taxi.

12 Q Where is that located, sir?

A 242nd Street and Broadway.

Q In what capacity, sir?

A I worked there as an owner-driver. I had my own car.

Q Did you receive a salary, sir?

A No, I paid 25 per cent commission to the office of my daily bookings, daily.

Q From the period of approximately 1969 to 1972, can you estimate your average weekly earnings, sir?

A About $200 a week.

THE COURT: Where did you say you worked?

THE WITNESS: I worked for Al's Taxi in 1969.

THE COURT: All right. Go ahead.

Q Do you know a man by the name of John Dinino, Mr. Hershkowitz?

A Yes.

Q Is he in the courtroom today?

A Yes.

Q Would you identify him to the jury?

A Yes. (Indicating.)

MR. ABZUG: Let the record reflect that the witness has identified the defendant Dinino, your Honor.

Q When did you first meet the defendant, Mr. Hershkowitz?

A I met John towards the end of 1965.

Q Where were you employed, sir?

A I was employed at Knolls Limousine Service.

Q Did there come a time, sir, when you borrowed money from Mr. Dinino?

A Yes.

Q Approximately what time, sir?

A Between 4 and 5 o'clock in the afternoon.

Q What year, sir?

A Towards the end of 1965.

Q Where were you employed at that time?

A Knoll's Limousine Service.

Q Where is that located, sir?

A On Mosholu Avenue in the Bronx and Riverdale.

Q What kind of a business is Knoll's Limousine?

A They have a transportation service. They take people downtown and downtown back to Riverdale.

Q Could you describe to the jury the conversation that you had with Mr.Dinino?

A Yes. I was introduced to him, and I told him I needed $100.

He said, "Fine. You will have to pay me back $15 a week for eight weeks."

Q Where did this conversation occur, sir?

A In front of Knoll's office.

Q Following this conversation did you see Mr. Dinino again?

A Yes.

Q Where did you see him again?

A In front of Knoll's office.

Q When did you see him again?

A Between 4 and 5 o'clock. On Fridays.

Q I am sorry?

A Between 4 and 5 o'clock on Fridays.

Q What, if anything, happened when you would see him on these occasions?

A Well, I gave him the $15 payment.

Q How long did it take you to repay the defendant on this first $100 loan?

A Eight weeks.

Q Did you ever miss any payments, sir?

A No.

Q Following the payment for this first loan to Mr. Dinino, did you have occasion to take another loan from Mr. Dinino?

A Yes. In 1965 I took the same $100 loan and paid him back the same way.

Q Where would you pay him back?

A In front of Knoll's office on Fridays between 4 and 5 o'clock.

Q [illegible] were the terms of repayment, sir?

A $15 a week, sir. $15 a week for eight weeks.

THE COURT: He said it was the same.

Q Did you make all the payments, sir?

A Yes.

THE COURT: He said the same thing happened. Let's get to the next incident.

Q Did you borrow again from John Dinino?

A Yes. In 1968 I took two loans under the same conditions, and paid him back the same way.

Q How much were these loans sir?

A $100 each.

Q Did you miss any payments?

A No.

Q Following the repayment of these loans, sir, did there come a time when you borrowed again from John Dinino?

A Yes.

Q When, sir?

A In 1969 when I was working for Al's Taxi.

Q What part of 1969, sir?

A It was towards the third-quarter of the year.

Q Where did you meet Mr. Dinino then?

A I met him in the luncheonette right next to Al's Taxi.

Q Who was there, sir?

A I believe Lou Materozzo was there.

Q Did you have a conversation with Mr.Dinino?

A Yes.

Q What did you say to him and what did he say to you?

A I told him I needed $500. He said, "Fine.

You will have to pay me back $60 a week for 10 weeks."

Q Prior to this conversation in 1969 did you ever see Mr. Dinino at Al's Taxi?

A Yes.

Q When, sir?

A Well, he used to come around on Wednesdays and Fridays between 4 and 5 o'clock.

Q What did you observe when he would come around, if anything, sir?

A He was just talking to about three of the boys there that I knew.

Q Who were these three men, sir?

A Lou, Billy Cassese and Phil Cassese.

Q Following this fifth loan in 1969, were you able to make payments?

A Yes. I made five payments in a row.

Q To whom did you make these payments, sir?

A To John.

Q Did you make them to anyone else, sir?

A Not at this particular point.

Q What happened after you made the five payments, sir?

A Well, then I took a re-loan, and he gave me $200 which brought the amount up to $600 again.

Q Did you have a conversation with Mr. Dinino when this loan occurred?

A Yes.

Q Where did this occur?

A In the luncheonette right next to Al's Taxi.

Q What happened after this conversation, sir?

A Well, I told him I needed a re-loan, and he gave me $20[illegible] which brought it back up to $600.

It was $60 a week for 10 weeks.

Q Following this re-loan, sir, where were you employed?

A Following this re-loan I was employed at Right Way Transportation.

Q Where is that located, sir?

A 48th Street and Tenth Avenue in Manhattan.

Q Approximately how far away is that from Al's Taxi?

A Oh, I imagine 15 miles away.

Q What kind of a job did you have?

A I was driving school children to school and taking them home.

Q Were you a salaried employee?

A Yes.

Q How much did you make?

A About $180 a week I was earning.

Q While you were at Right Way did you see John Dinino?

A I did see him, but it was up at Carter's on Mosholu Avenue in the Bronx, Riverdale.

Q When did you see John Dinino?

A Between 4 and 5 o'clock on Fridays.

Q For what purpose would you see Mr. Dinino?

A To pay him what I owed him.

Q How much were your payments at that time, sir?

A $60 a week.

Q How many times did you drive the 15 miles from Right Way to Carter's to pay Mr. Dinino his $60, how many payments?

A Well, there was five payments that I gave him.

Q Then what happened, sir?

A Then my wife fractured her ankle and she was out of work. I told him that I could not make any --

Q Excuse me. Who did you tell?

A I told John that I could not make the full payments at that time, and that I had to give him interest payments.

Q What did he respond?

A He said, "Fine. It will cost you $10 a week."

Q Where did you have this conversation with Mr. Dinino?

A In front of Carter's Service.

Q Who was present at this conversation?

A Well, Lou Materozzo might have been there, but I am not sure.

Q Following your conversation with Mr.Dinino where he told you you had to start paying interest, did you make any interest p yments?

A Yes. I paid about eight interest payments in a row.

Q Where did you make these payments, sir?

A In front of Carter's Limousine Service.

Q Where were you working at this time, sir?

A I was still working at Right Way at the time.

Q To whom did you make the interest payments, sir?

A To John.

Q Did you make the payments to anyone else, sir?

A No, sir.

Q How long were you able to keep up these weekly interest payments?

A Well, until I got sick, which was at the beginning of the summer in July of 1970.

Q What happened when you got sick?

A Well, I had a complication set in from diabetes that I had. I went into an insulin coma and I had trouble with my spine, and a lot of arthritis in my spine.

I was unable to work for quite some time.

Q How long were you unable to work, sir?

A About three months.

Q During this time were you able to pay Mr. Dinino his weekly $10?

A No, I wasn't able to give him anything.

Q What happened after your illness terminated, sir?

A Well, I went up to Carter's after about two months to visit the boys up there, and John came in.

And he grabbed me by the arm in an angry tone of voice and he said to me, "Where is the money you owe me?"

Q What did you do, sir?

A I said, "Haven't I paid you enough?"

He said, "No, you still owe me money, and you have to pay me."

I said, "I can't do anything right now because I'm sick and I have to wait until I go back to work."

He finally calmed down and agreed to it.

Q After that conversation did you begin to work, sir?

A Yes. About a month after I began to work, and

I paid him the remaining five $60 payments, and that was the end of it.

Q How long did you begin payments after you geban work, sir?

A The following week.

Q Where did you begin work, sir?

A At Carter's Limousine Service.

Q Where would you pay Mr. Dinino?

A On Fridays in Carter's.

Q How many payments did you pay until you had paid off the balance of your loan?

A How many?

Q Yes.

A The 10 payments.

Q Did you make them to anyone else besides Mr. Dinino?

A Well, I gave two payments to Vinnie while I was down at Al's. Vinnie came with John one day and he in-introduced him as a friend. He said that if he is not around that I should give the payments to Vinnie.

Q You gave two payments to Vinnie?

A Two payments.

Q Is Vinnie in the courtroom today?

A Yes.

Q Would you identify him for the jury?

A Right over there (indicating).

MR. ABZUG: Let the record reflect, your Honor, that the witness has identified the defendant.

Q Where did you make these paymnents to Vinnie?

A While we were at Al's place.

Q Where, sir?

A 242nd Street and Broadway.

Q What time did you make these payments?

A Between 4 and 5 o'clock.

Q Did you ever see anybody meet with Vinnie besides yourself?

A No.

Q Just yourself?

A That's right.

Q Approximately when did John Dinino grab you by the arm and demand payment, sir? What was the year?

A 1970.

Q What part of the year, sir?

A About August.

MR. ABZUG: I have no further questions of this witness, your Honor.

THE COURT: Cross-examination.

CROSS EXAMINATION

BY MR. BLAUSTEIN:

Q Mr. Hershkowitz, during this entire time that you borrowed the money from John Dinino, outside of that one incident, was your relationship with Mr. Dinino friendly?

A Very friendly.

Q Very friendly. As a matter of fact, on that occasion what specifically did he do? Will you show us?

A Well, he grabbed me by the arm, and then in an angry tone of voice he said to me, "Where is the money you owe me?"

Q He wanted to be repaid.

A That's right.

Q And then how long did it take for that to subside?

A To pay him, you mean?

Q No. For his tone to calm down.

A About 10 or 15 minutes.

Q Then everything was the same as it was before?

A Yes.

Q He never hurt you physically, did he?

A No.

Q Did you ever see him hurt anybody else?

A No.

Q And you could not borrow any money elsewhere?

A No.

Q You used thismoney for what purpose?

A Well, I was gambling. I had to pay bills at home.

Q And you looked for Mr. Dinino?

A Right.

Q Did you, during this period of time, go out and eat with Mr. Dinino?

A Yes. On certain Fridays John used to take us into the luncheonette and buy us coffee.

Q When you say "us," who was included?

A Lou and myself.

Q Lou was another employee at Carter's?

A Yes.

Q Or was it Carter's or Al's?

A I mean at Al's. Well, he used to do the same thing when we were at Carter's also.

Q It was a friendly group?

A Yes.

Q There was no animosity between any of the people?

A No, not at all.

Q You are not afraid of him, are you?

A Not at that time. Now I am, because I have been sick for the last -- I'm on Social Security Disability and that means a lot.

MR. ABZUG: I am glad the defendant finds it so funny, your Honor.

THE COURT: What do you mean that you are now?

THE WITNESS: Well, I have been on Social Security Disability since June of '73.

THE COURT: Why would that make you afraid of Mr. Dinino?

THE WITNESS: I'm not as strong as I used to be.

THE COURT: Why do you need to be strong?

THE WITNESS: John is 30 years younger than I am.

BY MR. BLAUSTEIN:

Q Was that remark made in some way to be facetious?

A No.

THE COURT: Do you know what "facetious" means?

THE WITNESS: Yes.

THE COURT: We are all wondering what you meant by that when you said you are afraid of him now.

THE WITNESS: Because I am a sick man right now. He is a young, strong boy.

Q During the period when he was loaning you money,

were you afraid of him?

A No.

MR. BLAUSTEIN: I have nothing further.

THE COURT: All right. Is there any cross-examination, Mr. Peluso?

MR. PELUSO: Very briefly, Judge.

CROSS EXAMINATION

BY MR. PELUSO:

Q Mr. Hershkowitz, back in October, October 10, 1973, you were interviewed by some agents, is that right, October 3, 1973?

A It could have been then, but I don't remember the exact year.

Q This was your first interview with the agents.

A Yes.

Q And this took place at 2686 Bailey Avenue in the Bronx?

A Yes.

Q How much time did you spend with the agents on that occasion when they spoke to you?

A I'd say about a half-hour.

Q And they asked you questions about the Activities Act Al's and Carter's --

A I don't think so.

Q Well, they asked you questions about Mr. Dinino and about borrowing money, is that correct?

A They showed me pictures of John and Vinnie. They asked me if I kn them.

Q You say they showed you pictures of Vinnie on that day?

A Yes.

Q You are certain of that, sir?

A Positive.

MR. PELUSO: Judge, may we approach the bench at this time?

THE COURT: Yes.

(At the side bar.)

MR. PELUSO: I have here, Judge, Government's Exhibit 3547, which is the report made by the agent of that interview.

Although there were photographs displayed there is no mention of a photograph of Mr. De Vito being displayed at all. There is no mention of Mr. De Vito at all here.

Now, if there is an additional report to this meeting, I think we should have it. If not, Judge, I would like to mark this and offer this in evidence at this time.

THE COURT: I assume there is no other report.

MR. ABZUG: Absolutely not, your Honor.

THE COURT: All right.

(In open court.)

MR. PELUSO: At this time, if your Honor please, I would ask that Government's Exhibit 3547 be marked as Defendants' Exhibit C for identification.

THE COURT: All right.

xx (Defendants' Exhibit C marked for identification.)

MR. PELUSO: If your Honor please, at this time I am going to offer Defendants' Exhibit C for identification in evidence.

MR. ABZUG: There is an objection, your Honor, a strenuous one.

It is totally collateral. You can impeach the witness forever on these minor points.

THE COURT: Let me see that.

MR. PELUSO: All right (handing).

THE COURT: Well, does the government concede that this is the substance of what Mr. Hershkowitz told the FBI on October 10, 1973? Is there a question about its accuracy?

MR. ABZUG: No. The government concedes he was shown a list of pictures.

THE COURT: I am not asking you that.

MR. ABZUG: Yes, we do concede that, your Honor.

THE COURT: I overrule the objection and admit Exhibit C.

xx (Defendants' Exhibit C received in evidence.)

MR. PELUSO: Judge, may I pass this around to the jury at this time?

MR. ABZUG: I object, your Honor. The jury can have the evidence when they go in to deliberation.

MR. PELUSO: Rather than read it.

THE COURT: Read it. Why don't you read it?

MR. PELUSO: May I have a stipulation from the U.S. Attorney that Defendants' Exhibit C which is in evidence is the substance of the conversation between Mr. Hershkowitz --

THE COURT: He has so stipulated.

MR. PELUSO: And that further there is no mention of any photograph of Mr. De Vito having been shown to Mr. Hershkowitz.

THE COURT: If there is not, there is not.

MR. ABZUG: He can read it, your Honor.

THE COURT: Mr. Abzug, I want to save time.

Any lawyer is entitled, when an exhibit is in, to have it displayed to the jury at that time. What Mr. Peluso is doing is offering a very simple exhibit. One facet of this is that does it refer to the showing of any photograph.

MR. PELUSO: Yes, but not Mr. De Vito's.

THE COURT: Okay. If it doesn't, it doesn't. Can we go on to the next point?

MR. PELUSO: That is all.

THE COURT: All right. Do you have redirect examination?

MR. ABZUG: Yes, I do, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Hershkowitz, at the time that Mr. Dinino grabbed you, what was the state of your health, sir?

A Well, I was sick at the time.

Q What did you feel when he grabbed you?

A Well, I didn't feel any actual pain.

Q What were your emotions, sir?

MR. BLAUSTEIN: I object to that.

THE COURT: Overruled.

A I was a little angry at him.

Q Any other emotions, sir?

A That's about all.

Q Mr. Hershkowitz, do you recall testifying before the grand jury?

A I do.

MR. WALLACH: Your Honor, we renew the objection.

THE COURT: Overruled. There are uses and uses. I think this is a different situation than when we were concerned with before.

MR. WALLACH: Sorry, Judge.

xx (Government's Exhibit 9 marked for identification.)

MR. PELUSO: Judge, I object to this as being improper redirect examination.

THE COURT: I will overrule that.

Q I am showing you what has been marked for identification only as Government's Exhibit 9, and directing your attention to line 23 on page 4 and line 9 on page 5. Does that refresh your recollection as to the emotions you experienced when Mr. Dinino grabbed you by the arm and demanded payment?

A Yes.

Q What were those emotions that you experienced, sir?

A Well, I was afraid at that time because I was sick.

MR. ABZUG: No further questions, your Honor.

THE COURT: All right. Is there anything further from this witness?

MR. BLAUSTEIN: Just one minute.

RECROSS EXAMINATION

BY MR. BLAUSTEIN:

Q Mr. Hershkowitz, you were not so sick that you were incapacitated from working, is that correct?

MR. ABZUG: At what time, your Honor?

Q At the time that you described this incident.

A Well, I was sick at the time.

Q But you knew you were sick. Did Mr. Dinino know you were sick?

A He did.

Q Did you tell him you were sick?

A Well, he knew it because I hadn't paid him for about eight weeks before that. I hadn't been working.

THE COURT: Had you gone back to work at the time that you went up to Carter's and that this incident occurred?

THE WITNESS: I went back about four weeks after that. In other words, I was out about 12 weeks altogether.

THE COURT: This was after about eight weeks?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. BLAUSTEIN:

Q This motion or action that Mr. Dinino took in regard to your arm, did that hurt you?

A No.

MR. BLAUSTEIN: That's all.

THE COURT: All right. Thank you very much.

(Witness excused.)

MR. ABZUG: The government calls Ronald Levine.

mp102

R O N A L D L E V I N E, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Levine, how old are you, sir?

A 27.

Q Directing your attention to late 1970, were you employed, sir?

A Yes, I was employed at Al's Taxi.

Q Where is Al's Taxi?

A 242nd Street and Broadway.

Q In what capacity were you employed there, sir?

A I was a driver.

Q What were your approximate hours?

A 7 in the morning to 6 or 7 at night.

Q While you were working at Al's Taxi, did you owe anybody any money?

A I borrowed money.

Q From whom, sir?

A I borrowed from John and Vinnie.

Q When you say John, John who, sir?

A John Dinino.

Q Is John Dinino in the courtroom, sir?

A Yes.

Q Would you identify him to the jury?

A That's John (indicating).

Q Who is Vinnie? Is he in the courtroom today?

A Yes (indicating).

MR. WALLACH: Objection, Judge. May we step up? This is important. I raised it before, Judge.

THE COURT: All right.

(At the side bar.)

MR. WALLACH: Judge, in your chambers I made known that we first learned today or last night that there may have been photographic identification of the defendants. I respectfully draw your Honor's attention to Section 3504 of Title 18.

I ask for an evidentiary hearing outside the presence of the jury as to whether the identification of this witness -- that the source may have been the photograph shown to him at pretrial, and whether it was unduly suggestive.

THE COURT: There has been no testimony about photographic testimony. What is the basis for this?

MR. WALLACH: Your Honor, let me go back. I have an opinion that I just got. It is a question of

photographic identification.

MR. BLAUSTEIN: Your Honor, may we have a recess?

THE COURT: All right.

MR. PELUSO: Government's Exhibit 3539 --

MR. ABZUG: May I be heard, your Honor?

MR. WALLACH: Your Honor, I direct your attention to Brathwaite v. Manson. It just came down.

THE COURT: Let me see that sheet of paper. 3539, that is an FBI report of 5/22/74 that simply says that Levine possibly identified the photograph of Vincent De Vito as the person he knows as Vinnie.

This really does not mean anything by itself. What is the evidence going to be?

MR. ABZUG: Copious, your Honor. He met Mr. De Vito about 59 times before that.

THE COURT: In these cases where you see somebody in the dim light in the alley -- you know, this is not one of these cases.

MR. WALLACH: I understand the situation, but we had no knowledge.

THE COURT: Let's proceed.

(In open court.)

THE COURT: I think we have to have another break,

ladies and gentlemen. There has been a question for a recess.

We will take a short recess, ladies and gentlemen.

(Recess.)

(The jury entered the courtroom.)

THE COURT: All right, Mr. Abzug.

MR. ABZUG: Thank you, your Honor.

BY MR. ABZUG:

Q Mr. Levine, is the man that you knew as Vinnie in the courtroom today?

A Yes.

Q Would you identify him for the jury?

A That's Vinnie (indicating).

MR. ABZUG: Let the record reflect, your Honor, that the witness has identified the defendant.

Q Where did you first meet John Dinino, Mr. Levine?

A I met John and Vinnie together down at Al's Taxi.

Q Did you have a conversation with them?

A Yes. I was borrowing money for somebody else.

Q What part of the year was this, sir, do you recall?

A I think it was late '70 or early '71.

Q Who was present at these conversations besides yourself, Mr. Dinino and Mr. De Vito?

A One other person was there. Louis Materozzo.

Q What, if anything, was said to you by Mr. Dinino and what did you say to Mr. Dinino?

A I borrowed $500 off him on a vig loan.

Q Was there a conversation, sir?

A They told me how the payments were.

Q Who told you?

A Vinnie and John. I think John it was that told me.

Q What did they tell you about the payments?

A $25 a week.

MR. WALLACH: The question was, what did they tell you.

THE COURT: What did John tell you?

THE WITNESS: $25 a week vig until the principal was paid off the $500.

Q What is vig?

A Interest on the money that you borrow. You pay $5 on $100 until any part of it -- every part $100 you pay $5 and that comes off -- you pay the whole $500 and you owe nothing after that.

Q Does the $25 vig reduce the principal, sir?

A No.

Q Did you receive anything at that meeting, sir?

A Well, I got the $500 and I brought it down to Al's Taxi.

Q How did you receive the $500, sir?

A Five $100 bills.

Q Following your conversation with Mr. Dinino, did you make any payments on this loan?

A Yes. I was paying it $25 a week. Actually, it was Phil who paid it at the beginning, and I wound up paying it because he didn't have any money.

I was paying it for a while, and finally I couldn't pay it any more. I told Phil.

Q How long did you personally pay the $25, sir?

THE COURT: Who were you borrowing it for?

THE WITNESS: Phil Jackson.

THE COURT: And when you started making these $25 payments did Phil give you the $25?

THE WITNESS: At the beginning, yes, he was giving it to me.

THE COURT: And would you then give it to --

THE WITNESS: John or Vinnie. Whichever one was around.

THE COURT: All right. Go ahead.

Q Approximately how many payments did Phil give to you to give either to John or Vinnie?

A He paid for a couple of months.

Q Then what happened at the end of a couple of months?

A Then I started paying it. He couldn't pay it any more.

Q Did you work continuously? Were you employed during this period that you were paying this?

A I was employed first at Al's Taxi, and then I went up to Carter Cab.

Q When did you go to Carter Cab, sir?

A Like the first couple of months of '71. Maybe February or March.

Q Did there come a time that you worked at a restaurant, sir?

A Yes. I had gone down to work down next to City Hall at the restaurant called Blimpy's. I went to work there for about a month.

Q What time period is that between the receipt of the $500 loan from John Dinino and when you went to work at this restaurant?

A I believe three or four months.

Q You worked at the restaurant for how long?

A One month I worked at the restaurant.

Q Where, if any place, were you employed after you stopped work at the restaurant?

A Then I went up to Carter Cab.

Q When you returned to Carter Cab did you see the defendant John Dinino?

A I think Vinnie was there at that time. No, excuse me. John was still there.

Q You saw Mr. Dinino when you returned to Carter Cab, is that correct?

A Right.

Q Did you have a conversation with Mr. Dinino?

A Yes. I met John inside of Al's Taxi and he called me outside.

Q When did this conversation occur, approximately, sir? What part of the year?

A Maybe March of '71, February or March of '71.

Q Who was there at the conversation between you and Mr. Dinino?

A Well, we went outside and there was nobody there with us. Just me and John when he was talking to me.

Q What did he say to you and what did you say to him?

A He told me -- you see, Phil told me that he told

John that he was paying the loan off when I left to go downtown. He told me it was my loan and I borrowed it, and I would have to pay it back.

Q What did you respond?

A I walked inside Al's and I told Phil that Johnny wants me to pay it and not you.

Q What, if anything, happened after that?

A Phil and Johnny were outside, and they were arguing about it.

Q Were you present at this conversation, sir?

A Yes, I was outside.

Q Who else was present at this argument between Mr. Jackson and Mr. Dinino?

A I think Tommy Brando was there.

Q What was said between Mr.Dinino and Mr. Jackson?

A They had an argument. You know, they were hollering about who was to pay it, you know. They were arguing about it.

Q What specifically was said, if anything?

A Johnny got mad and said to Phil -- he told him to stop yelling and he told him he would kick him the balls if he didn't stop.

Q What was the subject of his argument?

A The fact of who was going to pay the loan, me

or Phil.

Q What were your emotions during the conversation, sir?

A There were no emotions. I was just there watching it.

Q You had no emotions whatsoever, sir?

A I felt uneasy like I am right now.

Q Why did you feel uneasy, sir?

A Because there was an argument going on.

Q Any other reason, sir?

A There was no other reason.

Q Directing your attention to the summer of 1972, did you owe anybody money at that time, sir?

A Yes. I borrowed money off Vinnie at that time?

Q How much did you borrow from Mr.De Vito?

A About $300.

Q Where did you borrow this, sir?

A In Carter Cab.

Q When did you borrow this, sir?

A I think it was either November or December of '72.

Q Did you have a conversation with Mr. De Vito?

A Yes. He just told me, you know, actually I knew how much it was, but it was said that it was $36 for 10

weeks.

Q How did you know, sir?

A Well,it was common knowledge what you pay a person that is loaning money.

Q Was it common knowledge what would happen if you missed a payment, sir?

MR. PELUSO: I object to that, your Honor.

Q Did Mr. De Vito tell you what would happen if you missed a payment, sir?

A Mr. De Vito was a perfect gentleman.

Q That's not my question.

MR. WALLACH: That is an answer, your Honor.

THE COURT: Did you get the $300 loan from Dinino or De Vito?

THE WITNESS: I got it from Mr. De Vito.

Q The question, sir, is did Mr. De Vito tell you what would happen if you missed a payment?

A Well, there was a vig charge if you missed it. A $10 vig charge.

Q Did you subsequently reduce the balance of this loan?

A Yes. I think I got it down to $180.

Q How did you get it down to $180?

A I paid for five weeks and $36 each week.

Q Who did you pay, sir?

A To Vinnie.

Q Where did you make the payments, sir?

A At Carter Cab.

Q What times?

A In the afternoon.

Q What day, sir?

A Usually it was on a Friday.

Q Did you see Mr. De Vito meet anybody else at Carter Cab during the year of 1972?

A Well, there were certain men that met him outside the place.

Q Who were those men, sir?

A Hy Segal met him outside the place. Sherman Ronson met him outside the place. That's about it.

Q What, if anything, did you observe when this happened, sir?

A Just them talking.

Q How many times did you witness this, sir?

A I was a driver at Carter Cab, and I used to go in and out. I was driving.

When I used to come in I would see at certain times that people were talking.

Q How many times, sir, approximately? Was it a

weekly occurrence?

A It was a weekly occurrence.

Q Did Mr. De Vito work at Carter Cab during this period, sir?

A No.

Q After you reduced the balance of your $300 loan to Mr. De Vito or from Mr. De Vito to $180, did you have a conversation with Mr. De Vito?

A What happened was that I had owed another person who was loaning money.

Q Did you have a conversation with Mr. De Vito?

A Yes.

Q Where did the conversation occur?

A At Carter Cab.

Q Who was there?

A Myself, there was another person loaning money out by the name of Ralsky that was there.

Q Norman Ralsky?

A Right.

Q Who else?

A I think Sherman Ronson.

Q Did you have a conversation with Mr. De Vito?

A Yes.

Q What was said?

A He was going to buy up the loan that I had owed to Mr. Ralsky.

Q Did he say why he wanted to buy up this loan?

A It would make it easier for me to pay it and consolidating it, and this way I would not have to pay two different people at once.

Yes, it was making it easier.

Q For who, sir?

A For myself.

Q And him?

MR. PELUSO: I object to these remarks.

THE COURT: Overruled.

MR. PELUSO: Your Honor, at this time I move respectfully for the withdrawal of the jury.

THE COURT: No. No. The motion is denied.

Q Following your conversation with Mr. De Vito -- incidentally, did Mr. Ralsky say anything during this conversation?

A He agreed to it.

Q Did Mr. Ronson say anything during this conversation?

A He agreed to it.

Q What did he agree to?

A The fact that Vinnie was buying up the loan

from Ralsky.

Q He was buying up Sherman Ronson's loan as well?

A I don't know for sure.

Q What did he agree to, sir? You were present at this conversation.

A I don't know that. You have to ask Sherman Ronson.

I was listening to my own conversation.

Q Did you overhear Mr. De Vito say anything to Mr. Ralsky about Sherman Ronson during that conversation, sir?

A I did not hear directly. Sherman Ronson was saying -- we were talking -- we always talk in the place.

Q Did you overhear Mr. De Vito say anything to Mr. Ralsky about money that Mr. Ronson may have owed Mr. Ralsky?

A I am saying you have to ask Mr. Sherman Ronson.

Q I'm asking you, sir, and you are on the witness stand. What is your answer?

A As an individual I can answer for myself. I did have consolidation of my loans. Mr. Ronson -- you would have to ask him.

THE COURT: The question is, and we will have it once more, did you hear the conversation, or did you hear any conversation with Mr. Ronson?

THE WITNESS: Your Honor, I knew what was going on. Did I actually hear what was happening, the answer is no, but I did know what was going on.

THE COURT: How did you know what was going on?

MR. WALLACH: Your Honor, I respectfully object.

THE COURT: Just how? You say that you know.

THE WITNESS: It was common knowledge that he was buying up --

MR. WALLACH: I move that be stricken, your Honor.

THE COURT: The jury should disregard the "common knowledge."

Let's go to another point.

BY MR. ABZUG:

Q Following the conversation that you had with Mr. De Vito, Mr. Ralsky and Mr. Ronson, what happened after that? Did you make payments to Mr. De Viot?

A Yes.

Q In what amounts, sir?

A I believe -- $65 a week or $25 vig until the loan was paid off.

Q How much were you making at Carter Cab weekly, sir?

A It varied.

Q Approximately.

A Anywhere from two to three hundred dollars

Q When did Mr. De Vito come to accept this amount?

A It was on Fridays.

Q When, sir? How often?

A Once a week on Fridays.

Q Approximately what time?

A Usually around 5 o'clock.

Q When did you make your last payment to Mr. De Vito?

A The exact date I can't remember. It was about maybe a year later, though.

Q Would this be approximately the end of 1971, sir?

A Maybe the beginning of '72.

Q What happened after you paid your last payment to Mr. De Vito? Were your p[illegible]nts paid off?

A Yes.

Q You were free and clear, sir?

A I was free and clear, and then Johnny came around after that.

Q Did you have a conversation with Mr. Dinino?

A Yes. I borrowed money from Johnny.

Q Did you have a conversation with him at that time about Mr. De Vito?

A Well --

MR. WALLACH: I object to that.

THE COURT: Overruled.

Q Mr. Levine, your testimony was that Mr. De Vito collected payments from you until early 1972.

A And then John came around.

Q John comes around, and did you say anything to John about Mr. De Vito's absence?

A I knew that Johnny was coming around.

Q How, sir?

A Vinnie must have mentioned it to me.

MR. WALLACH: "Must have mentioned it" calls for a conclusion.

THE COURT: Overruled.

Q What did Vinnie say about Mr. Dinino coming around?

A That Johnny would be collecting, that's all.

Q After this conversation that you had with Mr. De Vito and he said that Johnny would be collecting, what happened after that?

A Well, if I finished paying my loan out and I borrowed some more money --

Q Who did you finish paying the loan to, sir?

A I believe I finished paying it to Vinnie.

Q How much did you borrow from Mr. Dinino after you finished paying Mr. De Vito?

A I was borrowing pretty regular. I don't remember how much I borrowed.

Q Do you recall giving the statement to the --

MR. WALLACH: Objection, Judge.

Q -- Federal Bureau of Investigation?

MR. WALLACH: Objection, Judge.

THE COURT: What is the objection?

MR. WALLACH: This is referring to prior unsworn testimony. This is not a hostile witness. He is getting the answers to the questions he is asking.

The fact that the prosecutor may not like the answer does not mean the witness is hostile or otherwise. Those are the answers.

THE COURT: Are you going to mark something for identification?

MR. ABZUG: I want to refresh his recollection, your Honor.

THE COURT: All right, you can attempt to do that.

(Government's Exhibit 10 marked for identification.)

xx

Q Sir, you do recall interviews that you had with the Federal Bureau of Investigation, do you not, sir?

A Yes.

Q And in those interviews you discussed your relationship with Mr. Dinino, did you not, sir?

A Yes.

Q I show you what has been marked for identification only as Government's Exhibit 10, and direct your attention to the second page of your statement.

I ask you if that refreshes your recollection as to when you borrowed money from Mr. Dinino?

A That's correct. From what I read, right, $300 and $39 for --

THE COURT: What is the answer?

THE WITNESS: Yes. Yes.

THE COURT: Yes what?

THE WITNESS: Yes, sir.

THE COURT: No. You were asking about the date of a particular loan.

Q When did you borrow the money from John Dinino, sir?

A In September of '72.

Q Do you recall how much you borrowed from him, sir?

A $300.

Q Do you recall where you borrowed it, sir?

A In Carter Cab Company.

Q At that time did you have a conversation with Mr. Dinino?

A Yes.

Q What was the nature of that conversation?

A Well, the payments for the $300 were $39 a week.

Q Is that what Mr. Dinino told you?

THE COURT: Mr. Abzug, I have a feeling that they were very familiar with the terms of these loans.

Can we get to some other point if there is any?

A Prior to the receipt of this loan in September of 1972, did you see John Dinino at Carter Cab?

A Yes.

Q For what purpose, sir?

A Well, besides borrowing money --

Q Were you making payments to Mr. Dinino?

A Yes.

Q When, sir, and during what period of time prior to 1972?

A I was borrowing money. I don't exactly remember what loan it was, but I was borrowing money. I was paying it back.

Q Subsequant to receipt of the $300 from Mr. Dinino in September of 1972, did you make any payments to him?

A Yes.

Q In what amount, sir?

A $300 was $39 a week.

Q Did there come a time that the terms of your payment changed?

A My car broke down one time.

Q When did your car break down?

A Around October of '72.

Q What happened then?

A John, he did me a favor and let me bring it up to his place to be fixed.

Q How much did the repair bill cost, sir?

A $275.

Q Did you borrow money at around that period from Mr. Dinino?

A Yes. Well, that was brought up to like a thousand dollars between what I owed him for the car and the other.

Q Could you elaborate a little bit on that, on how that was computed?

A Well, I forget exactly what it was down to, but

to $275, and he gave me the difference to a thousand dollars.

Q So you owed him a thousand dollars, but you did not receive a thousand dollars, is that correct?

A I received, between loans and the car, $1000. I owed $1300.

Q What were the terms of repayment?

A $65 a week and $25 vig.

Q Directing your attention to the latter portion of 1972 that we are speaking of, did you have a discussion with Mr. Dinino about gambling?

A I asked Mr.Dinino for a number to gamble with.

MR. BLAUSTEIN: I object to that.

THE COURT: I have another hearing at 4 o'clock. I am afraid that we will have to adjourn now.

I would like to have the jury go out, and we will adjourn until 10 o'clock tomorrow.

The jury will retire, and I will speak to the lawyers.

MR. WALLACH: May we make that at 10.30, your Honor?

THE COURT: We will make it at 10 o'clock.

Court is adjourned until 10.00 a.m.

(Jury left the courtroom.)

mp125

THE COURT: I want to cover a couple of points. I have looked at the De Sisto case, and then looked again at the New Rule of Evidence 801(d)(1). I want to discuss briefly this matter of admitting the grand jury testimony of Mr. Cassese.

When did he give the grand jury testimony?

MR. ABZUG: March of 1975, your Honor.

THE COURT: All right. It seems to me that the offer of the government is clearly within Rule 801(d)(1), because that rule says that a statement is not hearsay if the declarant testifies at the trial and is subject to cross-examination concerning this statement, and the statement is inconsistent with his testimony, and is given under oath subject to the penalty of perjury at a trial hearing or other proceeding.

Now, we have very recent grand jury testimony. He is testifying inconsistently here, or putting it another way, under the rule his testimony at the grand jury is inconsistent, and inconsistent in two regards. So far we have one answer that is flatly contradictory to what he said at the grand jury, and another answer which says he does not recall. Either way it is consistent if he gives positive testimony at the grand jury and different testimony. It is inconsistent with the claim of lack of recollection.

That grand jury testimony was very recent. We will come back to that in a minute.

The De Sisto case, it seems to me, gives no favor to the defendants. It is fairly in favor of the government because it rejects the rule that a prior inconsistent statement, particularly in a setting such as a grand jury, is useful only for impeachment, and it holds that it can be used for substantive evidence.

18 So I do not think there is any basis for excluding it.

Now, the point that Mr. Wallach makes is that somehow you are disabled from effectively cross-examining the man. I think that is not a good point. Part of my thinking on it, and just my observation of this witness and others, I find some of this claim of lack of memory very unconvincing. If he remembered in March at the grand jury, he now says when he is facing Mr. Dinino and Mr. De Vito and their families that he suddenly does not remember. I find that somewhat unconvincing. I do not think this is a situation where you have a man who is so mentally disabled that you cannot effectively cross-examine him. I think he is capable of being cross-examined. I think the government is entitled, under the rule, to introduce this. He is here in court. He strikes

mp127

me as a perfectly able-bodied, mentally competent person. I think simply his decision of whether he wants to testify here or not truthfully, and that is a matter not of mental incapacity, but that is a matter that both sides have to explore on examination and cross-examination.

I think it would be quite unfair to the government to allow anybody to claim a loss of memory here which I find very unconvincing, and then preevent the government from introducing very recent grand jury testimony that is clearly able to introduce under the rule. So that is a long way of saying I will overrule the objection to the grand jury testimony.

I want to say something further and to everybody in the courtroom. I am not making any reference to any attorney. But these witnesses, one witness admitted fear. Mr. Hershkowitz stated flatly that he was afraid sitting here in court, and Mr. Cassese, his condition indicated to me some of the same feeling. I just think everybody ought to know, and again I am excluding the attorneys from any reference, and I am not making any accusations against anyone obviously, but the Court and the jury and the attorneys and the government, everybody, has a right to have this trial go forward without having witnesses intimidated.

I think everybody should be warned that any

mp128

attempt to reach and intimidate a witness is a crime. It is a crime of an obstruction of justice. Any indication that that has occurred will be followed up by the United States Attorney's Office. It goes without saying that there is to be no attempt between now and tomorrow morning to, in any way, contact, communicate or each any of these witnesses. That injunction goes for anybody in this courtroom, wives, families, friends, or anybody else. Except legitimate attempts to interview these witnesses and that would be the attorneys only, and no one else is to communicate with them.

MR. WALLACH: Your Honor, may I say something? Your Honor, in regard to your ruling about the prior grand jury testimony, I would suggest to your Honor most respectfully that your Honor conduct an evidentiary hearing outside the presence of the jury to see whether Mr. Cassese can be subjected to cross-examination. Certainly before the grand jury he was not subjected to cross-examination.

Secondly, the government has given us exculpatory material that goes to the nature of Mr. Cassese's mental condition. Now, to take a chance on cross-examination before the jury with a witness like Mr. Cassese, I don't know what would happen. It may be disastrous.

THE COURT: I think you are exaggerating that. This man came into court perfectly able to testify. He was as poised as could be, and he may have decided not to tell the truth. That's the question I'm concerned about. But, as far as his mental ability to understand what is being asked of him, and to speak coherently, he obviously understands what is asked of him and he speaks coherently. There is no suggestion in that man of any incompetence to testify on direct examination or cross-examination, none at all. He was on the stand for enough time for me to draw that judgment. That is my judgment.

It may be appropriate to have a little hearing tomorrow, but the trouble with that is that -- well, we will consider that. We will come together at 10 o'clock. If it is appropriate to have an examination on that subject, okay. I don't see any need for it. He is a normal witness with a psychiatric problem some years ago. He may still be under some treatment, but that does not mean he cannot testify. There are many people under psychiatric treatment who testify every day in court. I think there may be other problems with this witness's testimony besides that, but let's not prolong this this afternoon. If it is appropriate tomorrow morning, we will have a short hearing out of the presence of the jury about his mental condition. We will

do that.

MR. WALLACH: One more thing, your Honor. Can we have the subpoenas we executed by your Honor to make it returnable forthwith tomorrow?

THE COURT: Who were they directed to?

MR. WALLACH: The psychiatrist and medical records.

THE COURT: We have got to finish this trial.

MR. WALLACH: Judge, we went to the marshal yesterday.

THE COURT: Couldn't you get a process service? You told me that the marshal could not do it. I told you to get somebody else to do it.

That is your own doing.

MR. WALLACH: We did not anticipate this happening.

THE COURT: You are talking about subpoenas and you are saying to me that the marshal could not serve them because he was too busy. You told me yesterday the marshal could not serve them. I told you to get other means of service.

MR.WALLACH: Your Honor, last night we felt we did not need him.

THE COURT: So you did not bother to serve him?

What is the alteration?

MR. WALLACH: To make it forthwith, so if we serve it tonight --

THE COURT: I will make it due tomorrow.

MR. ABZUG: Your Honor, for the record I want to advise the Court that on November 22, 1975, I did send a letter to defense counsel.

THE COURT: I do not think there is anyproblem with that. Where is the subpoena?

How many more witnesses do you have?

MR. ABZUG: We have Mr. Levine and Mr. Cassese and Mr.Ronson. Then we are finished, your Honor.

THE COURT: Does the defense have any prediction as to the length of their case and who is going to testify?

MR. BLAUSTEIN: Your Honor, may I approach the bench with counsel?

(At the side bar.)

MR. BLAUSTEIN: Your Honor, this has something to do in relation to a similar crime.

THE COURT: What kind of crime and when was it?

MR. BLAUSTEIN: It involved a stolen automobile over two years.

THE COURT: That is the extent of it?

MR. BLAUSTEIN: Yes. I would like to move to

suppress that in the event he takes the stand.

THE COURT: I am trying to get an estimate.

MR. BLAUSTEIN: My case will be short. I may have an accountant take the stand.

THE COURT: What is the prior criminal record?

MR. ABZUG: The last thing the man was charged with was on April 17, 1973, criminal possession of stolen property in the first degree. According to the records, there was a plea in the case.

THE COURT: I will not admit that on impeachment. Is that the only problem you have?

MR. BLAUSTEIN: The only problem.

19 THE COURT: You are not sure yet whether you will call him?

MR. BLAUSTEIN: If I have a witness, it will only go to establish what his net worth is to show that he is a man of low means and hard-working.

THE COURT: Can you give me an estimate of how long your case will take?

MR. PELUSO: The defendant may possibly take the stand. We have not decided. We may bring in three character witnesses.

THE COURT: So it would be a short case.

MR. PELUSO: Yes.

mp133

THE COURT: I will tell you, Mr.Abzug, that I have very serious doubts about this. Now, I think there may have been things that went on here that these people are not willing to talk about, but the jury cannot base that on the finding of guilt under reasonable doubt. I cannot send the case to the jury on that basis. We have a flat statement by one of these people, and I'm not going to take the time to try to analyze it, but we have a flat statement by Penker that he was never -- that no threats were ever made to him. I didn't hear about any threats at all.

I don't know what I can send to the jury. Frankly, I think -- is the rest of the testimony going to be along the same line? I don't think the case can go to the jury.

MR. ABZUG: Your Honor, I think your observation is correct, but you are tarring the government's case with the same brush. Mr. Penker's case, and I would argue in light of the relationship that Mr. Penker had with Mr. Dinino, the fact that Mr. Dinino would have to check back to the office and Mr. Dinino said, "Don't get me pissed off," and the fact that Mr. Penker paid after that is sufficient basis that Mr. Dinino's cursing at Mr. Penker was the threat.

Now, that in itself, I admit, is not the most

overwhelming case that ever came down the pike. As your Honor observed, some witnesses are afraid, but with respect to Hershkowitz and Levine, they are sufficient to go to the jury.

THE COURT: As a matter of just common reasonable sense you cannot have a violation of the criminal law unless the conduct rises to a level that is, I think, a clearcut threat of the kind of thing that was talked about in the statute. Now, obviously if you just take literal language, a statement by somebody that they will punch you in the nose, that literally is a threat, but from my point of view I think that it would be a travesty, and I am sure it would not stand up for two seconds on appeal. It would not stand up with me, but that can be extortion within the statute.

We all know the kinds of things that can be and are extortion. I am saying to you that I have not heard evidence of it. I will hear you tomorrow, but you think very seriously on it because I am sure that there is a very serious motion to dismiss. I don't want to prolong it tonight, but I just want to let you know. Frankly, I see nothing that I can really instruct the jury about.

What would I do to summarize the evidence? What would I do to guide them?

MR. ABZUG: You can give the charge submitted

by the government. With all due respect, and I have the greatest respect for your Honor --

THE COURT: Everybody has respect.

MR. ABZUG: -- for your Honor's judgment, but the question here is not a question of whether in your Honor's opinion, but whether a reasonable person can find -- and the facts in this case, for example, and that the extension of credit was made, and in connection with the repayment of that extension of credit, John Dinino threatened to punch him in the nose.

THE COURT: I do not want to prolong it, but I want to tell you again for the umpteenth time that I think you better think seriously overnight because I have in mind the statute.

That is all.

(Adjourned to December 3, 1975, at 10.00 a.m.)

LHjw 1

UNITED STATES OF AMERICA

v. 75 CR 265

JOHN DININO and
VINCENT DE VITO

December 3, 1975
10:30 A.M.

(Trial Resumed)

(In open court - jury present)

R O N A L D L E V I N E , resumed the stand, having been previously sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

XXX BY MR. ABZUG:

Q Mr. Levine, I want to direct your attention back to the conversation that you were describing to the jury between Mr. Dinino and Mr. Jackson and yourself during which Mr. Dinino discovered that the money, $500 he had given to you, had in fact gone to Mr. Jackson.

After you had the conversation with Mr. Dinino in late '71, how did you feel, sir?

A I felt a little uneasy.

Q Did you feel more than uneasy, sir?

MR. BLOUSTEIN: I object to that, your Honor,

as leading.

THE COURT: Overruled.

MR. PELUSO: May we have an answer from the witness, Judge? I believe he shook his head.

THE COURT: What is your answer?

THE WITNESS: My answer is that I felt uneasy. Yes, I felt uneasy.

Q Do you recall testifying before the grand jury, sir?

A Yes.

Q Do you recall testifying in October of 1973?

A Yes.

Q Do you recall giving the following answers to the following questions --

MR. BLOUSTEIN: Excuse me. Where are you reading from, Mr. Abzug?

MR. ABZUG: Page 21.

Q "Q What did he say to your friend?

"A He mentioned that he was going to kick him in the balls.

"Q Do you know why Dinino made this threat?

"A I borrowed for a man $500 with John and Vinny present. That was his partner, and I was introduced to these two from another person, Louis Materasso, his name

was, and I borrowed this money for Phil Jackson, a friend of mine, and I was working at the time for Al's Taxi.

"After I borrowed the money and I went to work downtown in a Blimpy-type restaurant and I left for eight months and when I came back it seemed that Phil and John had straightened the thing out, and when I walked into the place, he told me that I had to pay the money.

"John in a very nasty way, he mentioned it.

"Q What did he say?

"A He said that I am going to pay the money, he didn't want any shit going on.

"Q Was he loud?

"A Yes.

"Q Was he yelling?

"A Yes.

"Q Were you frightened?

"A Yes."

Do you recall giving that testimony, sir?

A Yes.

Q How did Mr. Jackson appear to you during this conversation?

A Well, he was angry. He was shouting.

Q Anything else, sir?

A He was angry. He was upset.

Q Anything else, sir?

A Well, he always had a certain look about him that, you know, he was upset, that's all.

Q Mr. Levine, do you recall giving the following answers to the following questions, I am looking now at page 22:

"Q Then what happened?

"A Phil and him went outside and myself and the two started yelling back and forth and then a fellow named Arnold settled the whole thing, but John said that doesn't go anymore" --

A I never mentioned Arnold's name because I don't know Arnold.

Q "Q That's when John said he would kick Phil" --

THE COURT: Just take it easy and slow down. While Mr. Abzug is talking, don't interrupt. The grand jury testimony is dated what date?

MR. ABZUG: October 19, 1973, your Honor. I am reading from page 22, lines 2 to 14.

THE COURT: Start over and take it slowly.

Q "Q Then what happened?

"A Phil and him went outside and myself and the two started yelling back and forth, and then a fellow named Arnold settled the whole thing, but John said that doesn't go any more because I'm back, and that's when he said that he was going to kick him.

"Q That's when John said he would kick Phil?

"A Phil Jackson, right.

"Q What did Dinino look like when he was engaged in this discussion?

"A Very angry.

"Q How did Jackson look?

"A He was angry and scared at the same time."

Do you recall giving that testimony, sir?

A Well, I tell you, I might have said --

Q Do you recall giving that testimony?

A No, I do not know Arnold and I never did know Arnold and I could have never possibly have mentioned Arnold's name, unless it was said into me. I don't know an Arnold and I never did.

The other part of the testimony is true, this part with Arnold, I don't even know Arnold.

Q Do you recall saying that Mr. Jackson looked angry and scared at the same time?

A Yes.

THE COURT: He said he recalls that.

THE WITNESS: Yes, I don't know an Arnold.

THE COURT: Let's go on.

Q Directing your attention, Mr. Levine, to the latter part of 1972, did you, sir, have a discussion with Mr. Dinino about gambling?

A Yes, I asked him for a number.

Q What type of a number, sir?

A To gamble with.

Q A telephone number, sir?

A Yes.

Q How many telephone numbers?

A I had two numbers to gamble with.

Q And he gave you both these numbers, sir?

A Yes.

Q What if anything else did Mr. Dinino say to you during this conversation?

A Nothing else. Just --

Q Did he give you a code name?

A Oh, yes, I was American for Lucky.

Q Mr. Dinino gave you that?

A Yes.

MR. BLOUSTEIN: I didn't hear that.

THE WITNESS: I was American for Lucky.

Q Would you describe to the jury how you would utilize these numbers, please?

A I would call up and say my name is American for Lucky and I would make my bets.

Q What type of -- what would be the response on the other end of the line, sir?

A Go ahead.

Q Would there be a callback number as well?

A There was also one callback number, yes.

Q Could you describe to the jury how the callback number operates?

A I'd call a number and a guy would get on the phone and say his name was Foxy and he would ask me for my number and he would call me back, whatever number I had.

Q How did you pay losing wagers -- let me ask you this.

How long did you utilize these telephone numbers that were given to you by Mr. Dinino?

MR. WALLACH: I object to this, Judge.

THE COURT: What ground?

MR. WALLACH: It is collateral, Judge.

THE COURT: Overruled.

Q How long did you utilize these telephone

numbers?

A A month or so.

Q Would you describe to the jury how losing wagers were paid and winning wagers were collected?

A It started -- the week started on a Monday and ended on a Sunday, and then Johnny would come around on Mondays and you would either get paid or he would collect.

Q What days would Mr. Dinino collect, sir?

A On a Monday.

Q Approximately how much would he collect?

A Whatever you lost or he would pay you whatever you won.

Q What was the range of your winning and losing figures?

A It could be anything. I could have won from 100, I could have won to $1,000. I could have won from 100 to $1,000.

No, excuse me. The most I could have lost was $500.

Q Why do you say that?

A Because I had a limit on me of $500. I could have won anything.

Q Who gave you that, sir?

A John gave me the limit.

Q Approximately how many times did you meet with Mr. Dinino to settle up?

A He used to come around every week.

Q What time, sir?

A In the afternoons, around 5:00 o'clock.

Q Where, sir?

A Carter Cab.

Q Were you always able to promptly settle up with Mr. Dinino?

A Almost always. One time I wasn't able to, I didn't have the money.

Q How much money did you owe him at that time, sir?

A About $500.

Q Did you have a conversation with him?

A Yes.

Q What did you say to him -- where was the conversation?

A Outside of Carter Cab.

Q Who was there?

A Just myself and Johnny.

Q About what time was the conversation?

A About 5:00 o'clock at night.

Q What did he say to you and what did you say to him?

A I told him that I lost and I didn't have the money to pay that week, you know, that I had -- was short money, and he said that I had to have it. He said because, you know, he didn't want to hear it. He had to have it that week. He was responsible for the money, so he had to have it.

Q Did he say who he was responsible to?

A No.

THE COURT: You owed him what?

THE WITNESS: $500.

Q Did he say anything else, sir?

A Well, he just said that he wanted the money, he didn't want to hear it. He wanted the money.

Q Did he say anything else, sir?

A No.

Q Mr. Levine, do you recall testifying before the grand jury, don't you, sir?

A Yes.

(Government's Exhibit 11 was marked for identification)

xxx

Q Showing you what has been marked for identification only as Government's Exhibit 11 and directing your

attention to lines 4 through 10 of that exhibit, does that refresh your recollection as to what Mr. Dinino said to you?

A I had told you --

Q Does that refresh your recollection as to what Mr. Dinino told you?

A I had told you --

Q Does that refresh your recollection as to what --

A This refreshes my recollection to what was said in the grand jury room.

Q Does that refresh your recollection as to what Mr. Dinino told you in the fall of 1972?

A No, because I had told you in your office that I don't think John said it. I was under a lot of pressure at the time.

Q Do you recall giving the following testimony and the following answers:

"Q At any time during the past five years were you threatened by Mr. Dinino or any of these individuals acting on his behalf?"

Your answer under oath, sir, before the grand jury.

MR. WALLACH: These remarks are unnecessary,

Judge.

THE COURT: Mr. Wallach, sit down. He is reading the testimony. That is all right.

Q "Q At any time during the past five years were you threatened by Mr. Dinino or any of these individuals acting on his behalf?"

Your answer, Mr. Levine, "I was threatened one time. I used to gamble with him and one time when I gambled and I lost heavily, I didn't have the money to pay, and John said he was going to send around a few guys to straighten me out."

Do you recall giving that testimony, sir?

A I recall being under pressure and giving the testimony, yes.

Q How did you feel at the end of Mr. Dinino's remarks to you in the fall of 19 --

A As I told you many, many times, I was never afraid of John Dinino.

Q I want to know how you felt, sir. That's the question.

A I felt uneasy.

Q Do you recall giving this answer to this question:

"Q Were you afraid?

"A Yes.

"Q Why did you repay John Dinino the money that you borrowed from him?

"A I paid him because if I didn't I was afraid of consequences that were going to happen.

"Q What consequences?

"A Get beat up, have a leg broken, or something."

Do you remember giving that testimony?

A Under pressure from the federal attorney, I remember giving that testimony.

Q What if anything did you do after this conversation with Mr. Dinino?

A What do you mean, what did I do after?

Q What did you do? Did you take any action? You owed him $500 --

A Yes, I borrowed the money from a shylock and I paid John the money I owed him.

Q What was that shylock's name?

A Norman Ralsky.

Q How soon after Mr. Dinino threatened you did you borrow from Norman Ralsky?

A I borrowed it right away.

Q Right away? How much did you borrow from him?

A I think I borrowed from him, I borrowed $500.

Q What did you do with the money, sir?

A I gave John the money I owed him.

Q Following the last money that you received from John Dinino in November of 1972, did you make payments to John Dinino?

A Yes, I was paying him.

Q How much,sir?

A I was paying him, I think, 50 or 65 a week or 25 vig.

Q Were you able to make these 50 to $65 payments or did you make the vig, sir?

A I was making vig for a while and then I got on my feet after I paid the other guy off and I was paying payments.

Q Would you explain to the jury what a vig is?

A Vig is money if you don't have the principal to pay them the whole entire $65, if you come up short you pay 25 vig. Nothing comes off the top.

Q Do you remember how much you owed him at that time, sir, when you were making these payments beginning in November of '72?

A I owed him $1300.

Q Where would you make these payments, sir?

A At Carter Cab.

Q To whom?

A To Johnny.

Q Anyone else, sir?

A If Johnny wasn't around, Vinny would come around.

Q Vinny DeVito, the defendant here, is that correct?

A Right.

Q When did you make your last payment, sir?

A I didn't make a last payment.

Q Are you still paying John Dinino now?

A No, I am not.

Q When did you make your last payment?

A I really can't recall. I think it was sometime in '74 or -- late '73 or '74. When the FBI started to come around.

Q Mr. Dinino disappeared when the FBI started coming around, is that correct?

MR. BLOUSTEIN: I object to that.

MR. PELUSO: I object to that.

THE COURT: Sustained as to form. Let's not put it in a pejorative argumentative fashion. You do not need to argue through your questions, okay?

MR. ABZUG: Yes, your Honor.

Q Mr. Levine, approximately how much did you borrow from Mr. Dinino in total?

A It was anywhere from -- with interest, anywhere from three to four thousand.

MR. ABZUG: I have no further questions.

THE COURT: Cross examine.

CROSS EXAMINATION

XXXX BY MR. BLOUSTEIN:

Q Mr. Levine, I think you said on your direct yesterday that Mr. DeVito never threatened you.

A No, he never did.

Q Did Mr. Dinino ever threaten you?

A Mr. Dinino used to come around, we used to play cards together, Mr. Dinino and me always got along great until this thing happened, and then he just disappeared from the area.

THE COURT: The question was not answered.

THE WITNESS: He never threatened me.

THE COURT: Did Mr. Dinino ever threaten you?

THE WITNESS: Never.

Q Did you play cards with him socially?

A Yes, three times a week.

Q Where did you play, in the Bronx?

A We played in Carter Cab.

Q In Carter Cab?

A Yes.

Q In other words, were there other people that played in the game with you?

A Yes.

Q From Carter Cab?

A From Carter Cab, right.

Q Was it a friendly game?

A Very friendly game.

Q Would he lose money?

A Yes.

Q And he would win money?

A Yes.

Q Like everybody else?

A Right.

Q Did you have occasion to go out and eat with him?

A I used to eat with him just about every time he came around.

Q When you did go out to eat, who picked up the check?

A Him or the other guy. Excuse me.

Q Different people at different times?

A Yes, right.

Q Like any other social group?

A Right.

Q Did you know what business Mr. Dinino was in other than your relationship in the borrowing of money?

A Yes.

Q What was his business?

A He owned a gas station.

Q Where was the gas station?

A In Ramapo.

Q Is that in Rockland County?

A Yes.

Q Did you ever go to that gas station?

A Quite a few times.

Q Was it on a main thoroughfare?

A It was right off the Thruway. As soon as you got off, about a mile down.

Q Were there gas pumps?

A Yes.

Q Grease pits?

A Yes.

Q What did you see Mr. Dinino do there in this gas station?

A Either pumping gas or working inside.

Q Did he wear overalls?

A Yes.

Q Were his hands greasy and dirty?

A Yes.

Q Did you go there on a social call or did you go there for business?

A I went there to fix my car.

Q To have your car fixed?

A Right.

Q Did he have mechanics there?

A Yes, he had a guy that was a mechanic there.

Q Did you order work done on your car?

A Yes, the transmission of the car.

Q He charged you for the fixing of the car?

A Yes.

Q Do you know other people who had their cars fixed there?

A Yes, Billy Ferrare had an engine job done up there. I think Charlie Penker went up for tires. I am not sure, though. I think he went up for tires.

Q Were you ordered to go there any particular time? Did he have sort of office hours there or was he there most all the time?

A He was th[illegible]e whenever I went up there.

Q You testified this morning in answer to some questions Mr. Abzug asked you about some grand jury testimony you gave back, I think in 1973, October 19th, and you said some answers were given under pressure.

A Yes, sir.

Q Would you explain to his Honor and the jury what you meant by that?

A Well, with the federal attorney, the first time that I ever saw him -- the first thing I ever said when they asked me, I lied to the FBI, they asked me if I know John, do I know Vinny, do I know Norman Ralsky.

I told them I didn't know them and I didn't want to know nothing.

Q Why did you do that?

A Because I happened to have liked John and Vinny, and I didn't want to be involved in anything like this because there was no -- as far as I was concerned, there was no grounds for anything.

I had no reason for getting people sent up for nothing at all, as far as I was concerned.

Q Were you under oath when you lied?

A Well, I didn't exactly lie. It wasn't lies. There were times that things were said, but you have to

know the person involved to know exactly what it was meant by it.

I could walk up to one of them -- I could walk up to John and say anything I want to John, you know, because he knew that -- it was like something that just happened, that's all.

That's the type of way we were around there.

Q Tell us more about this pressure that you were under.

A I went in to see the federal attorney, it wasn't Mr. Abzug, it was Mr. Padgett, and I went in as an unstable person. I was terrified, let's put it that way, and I went in and Mr. Padgett went and said to me.

He said, "Loo, there is two types of witnesses. There is a witness that sort of like plays our type of game and goes along with what we say and then there is a witness that is a hostile witness. You have your choice. You can either be one of our witnesses or you can be a hostile witness."

Q What role did you rant to play?

A I didn't want to get into any trouble. I never broke the law in my life and I didn't want to start.

Q Is that why you answered questions that were not truthful?

A The questions -- you don't understand. The questions were not untrue. John did say things which to me meant absolutely nothing.

In other words, that's how we talked to each other. It was nothing that -- there was nothing meant by anything that me and John would say.

Q In other words, was there a jargon that was used between you, you and the other men and John?

A Yes. We had our own little clique in Carter Cab that used to get along together quite well before anybody came around, and me, I would see John, I don't want -- there were other guys involved, there was Louie, there was Phil, Billy, we all got along good.

Q Let me ask you this, Mr. Levine:

When somebody says to you in the vicinity of Carter Cab or Al's Taxi or wherever you were, "I am going to kick you in the balls," what does that mean to you?

A It depends upon who it is coming from.

Q And how it was said?

A Yes.

Q And it means different things at different times?

A Definitely.

lhjw 23 Levine - cross

Q From different people to other people? If John said to you "I am going to kick you in the balls," what would that mean to you?

MR. ABZUG: Objection. It wasn't said to him, your Honor.

THE COURT: It was said --

MR. BLOUSTEIN: It was said to Jackson in his presence.

THE COURT: I will overrule the objection.

Q Did it mean that technically he was going to kick someone --

THE COURT: Let's go back. Reread your question that was objected to.

(Record read)

A Well, like I said, John is John. You have to understand John. That's the best way I can put it.

Q Would you be in fear when he said that?

A No.

MR. BLOUSTEIN: I have nothing else, your Honor.

THE COURT: All right, Mr. Peluso?

CROSS EXAMINATION

XXXX

BY MR. PELUSO:

Q Mr. Levine, when did you first meet Mr. DeVito?

A I met him on a pizza place at 242nd and Broadway.

Q From the date that you first met him until today, approximately how long have you known him?

A Four years.

Q In your opinion, is he a violent man?

A No.

Q During the period of time about which you have testified when you were making these loans from Mr. Dinino, would you tell the jury what your state of mind was concerning your transactions with Mr. Dinino and Mr. DeVito?.

Specifically, I am asking you, did you feel that they were doing you a favor and helping you?

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Overruled.

A Yes. I needed money, so I went to them, and, yes.

Q Did you feel that they were extorting or using force against you in order to get money from you?

A No.

Q Did they ever use violence against you?

A No.

Q Concerning this conversation about which we

have heard testimony between Mr. Dinino and Mr. Jackson about what we have referred to as kicking a man in the balls, where did this happen?

A In front of Al's Taxi.

Q Where was Mr. Dinino and where was Mr. Jackson when this conversation took place?

A They were facing each other.

Q Were they inside or outside --

A Right outside the front door.

Q Where were you, sir?

A I was like right on the side of both of them.

Q The conversation about which you have testified where Mr. Dinino said he would kick Mr. Jackson in the balls, were those the exact words that were spoken or is that the substance of the conversation between them?

A No, that was the truth.

Q Pardon?

A That was what was said.

Q You heard the word "kick"?

A Yes. It was -- yes. That's what was said.

Q If I were to tell you, sir, that Mr. Jackson testified before the grand jury on October 19, 1973, and he said --

MR. ABZUG: Objection. This is totally improper, your Honor. This is absolutely improper.

THE COURT: What?

MR. ABZUG: It is just an absolutely improper question, to read one witness' grand jury testimony to another.

THE COURT: It is not. Overruled.

Q And he said, and I am reading from page 8, starting at line 12, "In between, in the two or three weeks after giving Dinino the money, by the time the second week came, by then it was no longe. a friendly Phil and John, and he told me that if I didn't have the money on the following week that he would bust my balls."

The words "bust my balls" and not that he would presently kick him in the balls.

Does that refresh your recollection as to what the conversation actually was?

A It happened a long time ago, but I know there was a sentence that was in that form. Whether it was kick or bust --

Q So your testimony today, then, is not that Mr. Dinino says "I will kick you in the balls" at that conversation, but that he may have said "If you don't bring the money by next Monday I will bust your balls"?

THE COURT: It is a helpful distinction. Let's go on.

Q Is that so?

A I can't remember that. I know the word balls was used.

THE COURT: Let's move on. We have had enough of this.

Q Let me ask you this: If you heard that expression, to bust one's balls --

THE COURT: Can't we go on? We have been over this same phrase endlessly. Is there another point we can get to?

MR. PELUSO: Judge, I want to make one point on this, if I may.

THE COURT: The point is that he may have used the word "bust" and not "kick". Fine.

MR. PELUSO: May I proceed to my point, Judge?

THE COURT: It does not take a half hour to make that point.

Q You have heard this expression used in a sense other than a physical sense of actually doing injury?

When someone wants to annoy someone they say they will bust them, isn't that right?

A Yes.

Q In fact, when you are borrowing money from the bank and you don't pay them, they send you annoying letters, isn't that right?

MR. ABZUG: Objection.

THE COURT: Sustained.

Q You have heard people refer to that, haven't you, in the same sense?

MR. ABZUG: Objection.

THE COURT: Look, annoying letters is meaningless and we are not trying a case involving a bank, and I will sustain the objection.

Let's go on.

Q Are you friendly with Mr. DeVito today?

A I haven't seen him in years. I haven't seen him like since,you know, about three years ago.

Q Is there a feeling of animosity between you and Mr. DeVito?

A None that I know of.

Q Is there a feeling of animosity between you and Mr. Dinino?

A I always liked John, 'till today.

MR. PELUSO: I have no further questions.

LHJW 29 Levine - redirect.

REDIRECT EXAMINATION

XXX BY MR. ABZUG:

Q Mr. Levine, I believe you said in response to Mr. Bloustein's questions about what Mr. Dinino meant when he said he was going to get the boys to straighten you out, that you had to know John to understand what he meant by that; is that your testimony?

THE COURT: No, he did not discuss that. He discussed the other phrase.

Q Mr. Levine, what was your state of mind concerning your loans, loans that you received from Norman Ralsky?

MR. BLOUSTEIN: I object to that.

THE COURT: Sustained.

MR. ABZUG: Your Honor, may I have a side bar?

THE COURT: Do you have any other questions?

Q On the time that you failed to pay Mr. -- were there times that you failed to pay Mr. DeVito?

A There must have been a couple of times.

Q What would happen after that? Who would you see, sir?

A Nobody. I just see John.

Q You get the money from someplace, didn't you?

A After they left the area?

Q I am referring to the time that you were paying money to Mr. DeVito.

Did you always make your payments to Mr. DeVito?

MR. PELUSO: Judge, this is improper redirect.

THE COURT: Yes. I don't understand this.

MR. ABZUG: I hesitate to make my point in the presence of the jury, your Honor.

THE COURT: You are talking about payments to Mr. DeVito, right?

MR. ABZUG: That's correct. All I want to know is when he would miss a payment to Mr. DeVito, what would happen to the payment? Who would he give it to later?

THE COURT: All right.

Q Whom would you give it to?

A If Vinny was around, I give it to Vinny.

Q If Vinny was around and you missed a payment, who would you give it to?

A After they left the area there was a fellow that came around that was collecting.

Q Before they left the area, sir.

A It was either Vinny or John or -- well, one time -- his brother-in-law came around one time, just

once, and collected from me.

THE COURT: What is the name of the brother-in-law?

THE WITNESS: I don't know. Outside of that there was a fellow named Tony that came around collecting.

Q You don't know the name of the brother-in-law?

A No.

Q Do you see him in the courtroom today?

A I think he is back there.

Q Where is he?

A I see him.

Q Where is he?

A He has got a green shirt on.

Q The gentleman sitting there?

A I don't see that good from that far. If he came closer, I could see. I think it is the fellow with the green shirt on right behind -- in the second row.

THE COURT: What is next? He was the brother-in-law of whom?

THE WITNESS: Johnny. That's what I understood.

MR. ABZUG: I have no further questions.

THE COURT: You may step down.

(Witness excused)

lhjw 32

THE COURT: Next witness.

MR. ABZUG: Mr. Cassese.

MR. PELUSO: Judge, if your Honor please, at this time I think the person that was identified should be identified for the record and should state who he is.

MR. ABZUG: I object.

THE COURT: Would you stand up?

MR. NICK DE VITO: I am Nick DeVito.

MR. PELUSO: Judge, may we have whether or not he is the brother-in-law of Mr. DeVito?

MR. ABZUG: Your Honor, this man is not under oath.

MR. PELUSO: Let's put him under oath.

THE COURT: Mr. Abzug, please. You asked him to identify somebody back there. It wasn't clear. We have got a whole group of people and we can certainly have him stand up. If anyone wants to call him as a witness further, that can be done. That is as far as we will go on this now.

MR. ABZUG: That is my only point, your Honor.

THE COURT: Next witness.

MR. WALLACH: May we approach a second, your Honor?

THE COURT: I am not going to have the kind of

lhjw 33

session that we talked about last night. We will go ahead with the regular testimony of Mr. Cassese, please. You can cross examine when your time comes or Mr. Peluso can.

P H I L I P C A S S E S E , called as a witness, being previously sworn, testified further as follows:

THE COURT: You are still under oath, Mr. Cassese, sit down.

DIRECT EXAMINATION CONTINUED

XXXX

BY MR. ABZUG:

Q Mr. Cassese, I am directing your attention now to the time period extending from 1970 to 1973 when you testified yesterday that you borrowed $500 from Mr. Dinino and paid him approximately $50 back.

How many payments did you make to him during this period, sir?

A Well,I might say ten payments.

Q When was this interest paid, this $50 which you are speaking of?

A Well, probably at the time when I finished the payment of the original loan.

Q So it is your testimony that it was one lump sum, is that correct?

A No, no. I never paid a lump sum.

Q The $50 was paid on only one occasion, is that your testimony?

A That's probably the way it happened. I don't remember the exact details. I couldn't possible remember all them details.

MR. ABZUG: Mark this for identification.

(Government's Exhibit 12 was marked for identification)

Q Incidentally, are you familiar with the term vig, sir?

A Pardon?

Q Vig? Are you familiar with that term, vig?

A I am, yes.

Q Tell the jury what vig is.

A Well, it is -- usually applies to sort of payments other than the payment of the original amount of the loan. It is sort of an extra payment just like the bank would charge you interest, they call that vig in that particular field of lending.

Q Directing your attention -- did you pay Mr. Dinino any vig, sir? On this loan.

A Vig?

Q Yes.

lhjw 35 Cassese - direct

A Well, I wouldn't say vig. Is it possible that you might mean payments?

Q No. I mean what you just defined to the jury as vig.

A Well, I know I paid the original loan plus the extras, which was part of the agreements between me and the so-called Mr. Dinino.

Q So-called Mr. Dinino is sitting right there?

A Yes.

Q With respect to whether you made those vig payments, interest payments, on one occasion or many, does Government's Exhibit 12 for identification, beginning on page 6, line 13, to page 7, line 16, refresh your recollection? Just read that, sir.

A The whole page?

Q Yes. Read it to yourself and see if it refreshes your recollection.

THE COURT: This is the grand jury testimony of --

MR. ABZUG: Of March 7, 1975.

THE COURT: Okay, about nine months or so ago, all right.

(Pause)

A I believe this is so. I believe it is true,

more or less.

Q Could you tell the jury how that refreshes your recollection, please?

A In reference to what?

Q In reference to my question as to whether the interest was paid on one occasion or on a number of occasions.

A Well, the agreement, when I asked for the loan of whatever the amount was, I voluntarily agreed to make the payment, the complete amount of payments, plus extra dollars as a sort of expression of my appreciation for being able to borrow cash from this particular gentleman, cash which I was unable to borrow from other sources, such as banks, finance companies.

Q Is this known as a 6 for 5 loan, sir?

A Pardon?

Q A 6 for 5 loan?

A I may have agreed to pay an extra few points of interest.

Q A 6 for 5 loan, would you explain to the jury what that is, sir?

A For every $5 that is borrowed, you agree to pay back 6, in most cases. Not all cases.

Q Getting back to my original question, sir,

did you make -- the vig payments were payments other than the interest that was paid on the principal, is that correct?

A The vig payments was towards the principal.

Q Did you make these vig payments on one occasion or on a number of occasions, sir?

A On several occasions. According to the agreements between myself and --

THE COURT: Are you talking about vig of big?

THE WITNESS: Pardon me?

THE COURT: Are you using the word "vig" or "big"?

MR. ABZUG: Vig, v-i-g, your Honor. Vigorish.

THE COURT: You mad some vig payments?

THE WITNESS: I thought he meant payments towards the principal.

THE COURT: He asked you about vig payments as you defined a few minutes ago. Did you make some of those?

THE WITNESS: Well, at the end of the so-called paying towards the interest, I would also pay a little interest or a little more than the amount borrowed.

THE COURT: The way vig has been defined

before in the case? If you were obligated to pay a certain amount a week on one of these 6 for 5 loans, suppose you are supposed to pay $60, or whatever it is, then if you can't make that then you pay this vig payment of a certain amount of money as a kind of penalty.

Isn't that the way it has been defined?

MR. ABZUG: Yes, your Honor.

THE COURT: That is really the question he is asking you.

Did you ever make such payments --

THE WITNESS: If I was unable to come up with an agreed payment, I would be permitted to make the agreed payment later on during the week or during the month when I accumulate it.

In other words, I didn't really pay any what is you say vig. Let's say I was supposed to come up with a payment today and I didn't have it. I would be given more time to come up with it.

THE COURT: In the meantime, did you have to pay anything extra?

THE WITNESS: No, no, nothing extra, to my knowledge. Not -- because the agreement was that I would make a certain amount of a payment each week.

Q Is it your testimony, sir, that if you missed

one of these payments, you didn't have to pay anything extra?

THE COURT: He has just said that.

A Yes, I think that's what I said, sir.

Q Do you recall testifying before the grand jury, sir?

A Do I recall testifying?

THE COURT: You do not have to ask him. If you want to refer to the grand jury, I told you, you can simply read it or you can use it to refresh his memory. That is up to you, Mr. Abzug. We have got those ground rules set out. Okay?

MR. ABZUG: Yes, your Honor, I am sorry.

Q "Q Well, I am not talking about if you missed the payments, I am asking you now whether as the condition of these loans you had to make weekly payments back to Mr. Dinino.

"A Yes.

"Q And if you missed one of these payments, you had to pay an additional sum of money, did you not?

"A Yes, I would have to pay what's known as a penalty.

"Q Vig or --

"A Or, as you would say, vig, yes, to which I

also agreed."

Do you recall giving that testimony, sir?

A No, sir, I don't. It is possible that I did testify, but at that time I was under very deep treatment by the doctor. Furthermore, when I was first approached --

Q Whom did you make these payments to, sir?

A John, Mr. Dinino.

Q Anyone else?

A Not that I can remember.

THE COURT: Is your memory better today than it was at the time of the grand jury?

THE WITNESS: I can remember a number of few things. The little details --

THE COURT: Specifically, is your memory better today than it was at the time of the grand jury testimony?

THE WITNESS: I really don't know. My mind can be refreshed and my memory can be brought back, but I might say that my memory is not as good as it was as the time I was before the grand jury.

I also would like to include the fact that --

Q Mr. Cassese --

MR. PELUSO: May he be allowed to finish?

THE WITNESS: A certain party representing the government made promises to me, which he never kept. He was completely a liar, an out and out liar, to me and my wife.

You might feel that I am hostile, and again I might say that I have a reason to be hostile. If I am dealing with --

THE COURT: Hostile to the government?

THE WITNESS: Hostile towards the people that represent the government. One or two people in particular representing the government promised me and promised my wife that they would not bother me to any great extent because of the fact that I was and still am under the treatment of a doctor, and this happened about two years ago.

My wife and I were discussing it last night, and when I deal with people, especially people representing the government, I feel that these people should be honorable, and if they make a promise, it may not be in black and white, but an oral promise, I feel that as representatives of the government they should be honorable, and they were not honorable, your Honor.

I want you to know this.

THE COURT: As you sit here testifying today

and as you sat testifying yesterday, are you influenced in any degree by a hostility towards the government lawyers?

THE WITNESS: I have no hostility towards the government. I have a little bit of a grudge because of his dishonorable way of promising my wife that I wouldn't be in any way brought into court because of the fact that I was being treated for a depressed condition of mine.

MR. ABZUG: Your Honor, may I have a side bar, please?

THE COURT: No, you go ahead.

THE WITNESS: When he made this promise to my wife, all he requested was that I go down to his office, and answer a few questions, and that would be the last time that I would be presented to -- I would never be presented to a grand jury or a case.

These are the things that my wife and I --

THE COURT: I want to tell you, sir, and I want to tell the jury, that you are under subpoena, you came here under subpoena, didn't you?

THE WITNESS: Right.

THE COURT: And under an oath to tell the truth here.

THE WITNESS: Right.

THE COURT: And nobody quashed or vacated or set aside that subpoena, and as far as I am concerned, you are here because you have got an obligation to be here and you have got an obligation to tell the truth.

You took an oath to tell the truth, the whole truth and nothing but the truth.

THE WITNESS: That's right, sir.

THE COURT: And you are under a legal subpoena to be here, the government had a right to subpoena you, as far as anything I know on the record, and you started testifying under oath and you took an oath.

THE WITNESS: Right.

THE COURT: I want that understood, and I want the jury to understand that. If there is any hostility or any misunderstanding on your part about your obligation, I want that cleared up right now.

THE WITNESS: The reason why --

THE COURT: I don't want any more discussion from you in response to my statement. I am telling you your obligation.

THE WITNESS: I am meeting my obligation but I want the jury to know that the representative of the

government is a liar.

THE COURT: Sir, I will hold you in contempt if you speak further, until I permit you. I want you to understand that you are -- I want the jury to understand, as I said, that you are under oath here -- you took an oath and you are here under a legal subpoena, and I want this understood and I want you to confine yourself to answering questions from now on.

I want you to listen to those questions carefully, make complete and truthful answers, and the government can continue its examination in whatever way it feels it ought to.

You can repeat what you have gone over so far, do whatever you feel you should do, Mr. Abzug, and we will continue in an orderly manner.

We will have a break in just a few minutes and we will have no further interruptions now.

Okay, Mr. Abzug.

BY MR. ABZUG:

Q Whom did you make these ten payments to, sir?

A Mr. Dinino.

Q Anyone else, sir?

A Not that I can remember.

Q I am showing you what has been marked for

identification only as Government's Exhibit 8.

Directing your attention, sir, to line 7 --

MR. BLOUSTEIN: What page?

Q Page 8, line 7 to line 12.

Does that refresh your recollection, sir, as to who you made these payments to, in addition to Mr. Dinino?

(Pause)

A It's possible that I --

Q Does that refresh your recollection, sir?

A I answered those questions according to the way it is written, and there might have been -- it's possible that I spoke the truth then.

Q Glad, since you were under oath, sir.

MR. PELUSO: I object to those remarks.

THE COURT: Strike them. Please, Mr. Abzug.

Q Does that refresh your recollection, sir?

A It does.

Q Whom did you make those payments to in addition to Mr. Dinino?

A Mr. DeVito.

Q Mr. DeVito?

A Is it DeVito? I knew him as Vinny.

Q How did you know him, sir, at the time you

lhjw 46 Cassese - direct

were making the payments?

A Vinny.

Q Is Vinny in the courtroom today?

A Yes, sir.

Q Would you please identify him for the jury?

A Sitting right here with the white shirt and the grey suit.

Q How many payments did you make to Vinny?

A How many payments did I make?

Q Yes.

A I might have mad three or four or five, maybe. I couldn't remember the exact -- I don't keep records on that.

Q Why, sir, did you make the payment to Vinny?

A Because I guess John wasn't around.

Q Did you know anything about the relationship between these two gentlemen, anything that Mr. Dinino said?

A No. I didn't know anything about their personal relationship.

Q Speaking now of the relationship with respect to the $500 that you owed to Mr. Dinino. Did Mr. Dinino tell you anything about Mr. DeVito?

A That I don't remember, whether he did or --

I did know that whoever came around, I made a payment to.

Q Directing your attention, sir, to page 9 of the grand jury testimony, lines 8 to 11. Would you read that, sir,and tell me if that refreshes your recollection?

(Pause)

A Yes, that's about right.

Q What's about right, sir? Tell the jury.

A That John probably spoke to me and said that a friend of his was coming around.

Q Do you recall that, sir, today?

THE COURT: Why do we have to labor this? You don't have to get it phrased exactly the way you want it. He said it is about right and he has said what it say.

Can't we make some headway?

MR. ABZUG: Your Honor, this is a conspiracy trial and there is a difference between --

THE COURT: You don't have to argue it. You have got to use some common sense. If he said it's about right, we do not have to have it said in some other way. We are not writing an indenture for a bond issue.

MR. ABZUG: I am sorry, your Honor.

THE COURT: Let's make some progress. We have enough problems without quibbling over precise words.

lhjw 48 Cassese - direct

Q Sir, during the time you were paying back Vinny, do you recall having a conversation with him about one of those payments?

A Do I recall about a certain payment?

Q Did you have a conversation with Mr. DeVito about one of the payments that you were making, that he was collecting for John Dinino?

A That I can't possibly remember that conversation. We always had conversation.

Q Directing your attention, sir, to the late spring or early summer of 1972, do you recall having a conversation with Mr. DeVito about a payment that you owed to Mr. Dinino?

A I don't remember that.

Q Showing you grand jury testimony of March 7, 1975, page 9, beginning on line 12 and extending to line 9 of page 11, I want you to read that to yourself, sir, and tell -- after you read it, tell the jury whether that refreshes your recollection as to whether you had a conversation in the late spring or early summer of '72 with Mr. Dinino about a payment that you owed Mr. DeVito -- with Mr. DeVito about a payment that you owed Mr. Dinino.

(Pause)

Q Does that refresh your recollection, sir?

A It does, yes.

Q Why don't you tell the jury about that conversation. Please, sir, tell the jury about that conversation.

A Well, it seems that I was slapped in the face by Mr. DeVito.

Q Where was this, sir?

A In the office where I was working, Carter Cab office.

Q Do you recall who was there, sir?

A No, I don't.

Q Do you recall whether your glasses fell off your face, sir, when you were slapped?

A Well, yes, they fell off my face.

Q Why did Mr. DeVito slap you in the face, sir?

A Well, I think the reason why was that I was very offensive towards him personally.

Q What did you say to him, sir?

A I said that I thought that I had been paid up.

Q Paid up to who, sir?

A Pardon?

Q Paid up to who, sir?

A Paid up my loan, completely paid off.

Q To who?

A To whom?

Q To who, yes.

A To John, I believe it was.

Q And Mr. DeVito obviously disagreed with you, sir, is that correct?

A He did.

Q What happened then when he disagreed? What did he do?

A His disagreement and my -- I lost my temper and I sort of moved towards him and he slapped me in the face and sent me back.

Q Is that what you told the grand jury, sir, that you moved towards him?

A Well, I was a little bit out of hand. I became very abusive.

Q Do you recall telling the grand jury that you moved towards Mr. DeVito before he slapped you? Did you tell that to the grand jury?

A I don't remember if I said that to the grand jury.

Q You just read your testimony --

THE COURT: You are at perfect liberty to read the entire section directly to the jury and avoid any of this back and forth business. Why don't you just

do that? That is the simplest way to get it out.

MR. ABZUG: Reading from page 9, line 12:

"Q Mr. Cassese, directing your attention to the late spring or early summer of 1972, that's approximately three years ago, and we are talking about approximate times now, I am sure the grand jury understand that.

"Do you recall an incident where this man known to you as Vinny came to Carter Cab where you were employed and to collect one of these payments on behalf of John Dinino?

"A Well, yes. He was there a number of times to collect instead of Vinny coming down.

"Q Right. And directing your attention to the specific time period, do you recall Vinny coming to Carter Cabs and asking you to make this payment to John Dinino and you told Vinny at that time that the loan that you had made for Mr. Dinino had already been complete and that you refused to pay the loan and that Vinny slapped you in the face, knocked your glasses off and told you that you would pay?

"Do you recall that incident?

"A Well, I -- I recall, it was a misunderstanding.

"Q Do you recall being slapped?

"A I do.

"Q By Vinny?

"A I do.

"Q And this was in connection with a loan payment that Mr. -- that you were to pay to John Dinino, right?

"A I believe it had something to do with that.

"Q Did you give Vinny the amount of money that you owed John at that time?

"A I did.

"Q And this was in response to the slapping?

"A Well, I like I say, it was a misunderstanding. I felt that I had made that payment to John.

"Q Right.

"A And Vinny disagreed with me.

"Q And he slapped you?

"A So I -- so I without thought said I ain't going to pay.

"Q And Mr. DeVito known to you as Vinny slapped you in the face?

"A That might have been the reason why.

"Q And then after that you repaid the loan?

"A Yes.

"Q Would you have repaid the loan if Mr. -- if Vinny hadn't slapped you?

"A I think I would, yes.

"Q Well, but it was your understanding that -- but it was your understanding at that time before Vinny slapped you you had already repaid the loan?

"A I thought I had made the payments."

Q Do you recall giving that testimony, sir?

THE COURT: He does not deny it. That is the grand jury testimony.

Q Do you recall any other person being present at this incident, sir?

A A couple of guys. There was a few guys there. I can remember possibly two.

Q What were their names, sir?

A I believe one was Jack Tellian.

Q What did Jack Tellian say, if anything? Incidentally, what was this payment? How much money was it, do you recall?

A About $15.

Q $15. Do you recall what Mr. Tellian said after Vinny slapped you and knocked your glasses off?

A I have no idea.

MR. PELUSO: Objection to what Mr. Tellian said, Judge.

THE WITNESS: I have no idea. Furthermore --

THE COURT: No "furthermore". You do not recall.

Q I show you Government's Exhibit 7 marked for identification and direct your attention to the bottom paragraph.

Do you recall what Mr. Tellian said?

THE COURT: It is already marked?

MR. ABZUG: Yes, your Honor.

A Well, that could be true.

THE COURT: Let me see that.

THE WITNESS: But that's not my testimony.

THE COURT: I don't know whether this is relevant or not.

(Pause)

THE COURT: I will sustain the objection as to Tellian's statement.

MR. ABZUG: I have no further questions.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. BLOUSTEIN:

XXX

Q Mr. Cassese, how long a period did you know John Dinino?

A How long have I known John Dinino?

Q Right.

A I might say about four or five years.

Q During that four or five years, have you seen

him frequently?

A Had I seen John frequently?

Q Yes.

A Well, I'd see him about a couple of times a month.

Q Did you ever have coffee or have a meal with him?

A We did.

Q Was it a friendly gathering?

A Always.

Q Do you consider him a friend of yours?

A A friend. A benefactor.

Q Somebody who helped you when you needed it?

A Definitely.

Q Did you ever make any payments of money to John because you were in fear of him?

A No fear. Never. We played cards together, we drank together, we ate together. He was at my house for coffee.

Q Were you with other people who were in your garage?

A Yes, sir.

Q Did you consider this part of your social circle?

A Of course.

Q Did you know what business he was in other than the activity he had with you?

A I did. I did.

Q What business was he in?

A Gas station. He operated a gas station.

Q Did you know where that gas station was?

A Well, I was never there, but it was up in Rockland County, I believe. Close to Route 17 and the Thruway.

Q You described this incident where you were slapped. As you sit here today, could you tell his Honor and this jury whether or not you would have paid back that money if it was proven that you owed money, whether you were slapped or not?

A I would have paid the money because it was my obligation --

MR. ABZUG: Objection, relevance, your Honor.

THE COURT: Overruled. What is your answer?

THE WITNESS: I would have paid, according to my agreements.

Q As you sit here today, do you consider that in some way you caused that incident?

A The face slap?

Q Yes.

A I must have caused it. I don't think Mr. DeVito would have slapped without reason. I probably became offensive. I don't remember the exact details. I probably said something personally, and that was it.

Q Do you have on occasion provoked argument because you did become offensive?

A Pardon me? I didn't catch the question.

Q Did you on occasion provoke argument because you do become offensive, on occasion?

A I am quick tempered. Very quick tempered.

MR. BLOUSTEIN: I have nothing further.

THE COURT: Mr. Peluso?

CROSS EXAMINATION

XXX

BY MR. PELUSO:

Q Mr. Cassese, can you tell us when you became ill?

A When I became ill?

Q Yes.

A At the age of 15.

Q You said you were under some care and receiving medication during this period of time.

A I am still receiving medication.

Q Were you receiving treatment at the Riverdale

Mental Health Care Center?

A That's right.

Q Were you under the care of a Dr. Nikonerow?

A I still am.

Q When did you become under Dr. Nikonerow's care?

THE COURT: The name of the center?

MR. PELUSO: Riverdale Mental Health Care.

THE COURT: What is your question?

Q When did you first come under Dr. Nikonerow's care at the Riverdale Mental Health Center?

A The exact date I don't think I can remember, but I believe January, about three years ago.

Q That would be about '72?

A Might be late '72 or early '73. Could be January, 1973.

Q Were you called into the U.S. Attorney's office sometime after you were under the care at the Riverdale Health Care Center?

A I believe I was.

Q Was this during a period of time that you were still being treated for your condition?

A I'd say yes.

Q Can you tell us in general laymen's terms

what you were being treated for?

A Severe case of depression.

Q Would it be what we would call a nervous breakdown?

A That's right.

Q Can you tell us how long you were at the Riverdale Mental Health Care, sir?

A About three years.

Q During this entire period of time you were receiving treatment by Dr. Nikonerow and you were under medication?

A I was, and still am.

Q And when you appeared in the U.S. Attorney's office you were under treatment by Dr. Nikonerow?

A I was.

Q And under medication?

A I was.

Q And was this fact made known to the U.S. Attorney's office?

A My wife made it --

MR. ABZUG: Objection.

THE COURT: Overruled.

A (Continuing) My wife spoke to whoever the person was, that I was being treated for a mental disorder.

Q When you appeared before the grand jury in March of '75, did you appear with your doctor?

A I did not.

Q Did you appear with an attorney?

THE COURT: I am sorry, you did not?

THE WITNESS: I did not.

A I did not.

Q Were you advised that you had a right to bring an attorney with you who could wait outside and consult with you?

MR. ABZUG: Objection.

THE COURT: That is relevant if it should have been done. I don't know if it should have been done or not. So I don't know whether the question has any meaning.

MR. PELUSO: My question is whether or not he was advised.

THE COURT: You are not contending that he was supposed to be advised, are you? I want to make that clear to the jury.

MR. PELUSO: I am contending that the other witnesses who were called were so advised, that they had a right to have an attorney wait outside.

MR. ABZUG: Objection to that remark and ask --

THE COURT: I will allow it as a question of fact but until there is further proof, I don't want the jury to infer that the gover-ment had the obligation to tell the man.

I don't know whether they did or did not, so we will just take it one step at a time.

But you were not as a matter of fact so advised, is that right?

THE WITNESS: I don't believe I was, your Honor.

Q As you testify here today, sir, looking back in retrospect, on the day that you appeared before the grand jury in March of 1975, do you feel that at that time you were in a proper state of mind to answer questions that were being put to you by the U.S. Attorney's office?

MR. ABZUG: Objection, your Honor.

THE COURT: I think I will sustain that as to form. You can go into the subject, but that is too conclusory.

Q Do you feel, sir, that some of the answers that were elicited from you before the grand jury were pressured from you?

THE COURT: Wait a minute. You are entitled, Mr. Peluso, to go into any facts that bear on the credibility

of his testimony here or his testimony before the grand jury, but his feeling in a kind of general way, I do not think that is going to help us very much.

MR. PELUSO: I will withdraw that question, Judge.

Q The answers that you gave before the grand jury, were those answers that you felt that the U.S. Attorney wanted you to make in response to his questions?

MR. ABZUG: Objection.

THE COURT: It is time for a recess. If the jury would withdraw, I will talk to you.

(Jury not present)

MR. ABZUG: Your Honor, may I say something?

THE COURT: No, basically what is in the record from this witness is adopted by him in court. There were a couple of pages, two or three pages read about the slapping incident, but I do not think it varies terribly from what he said in court.

To the extent it varies, it almost is a little more favorable to the defense, although that is not for me to decide.

So I just start with that point. He has certainly admitted to the slapping incident here in court. He had adopted that much. In other words, he has adopted

the main features here and now of what he said before the grand jury.

I think that you are entitled, however, to develop any facts that would bear upon the credibility of what he said in the grand jury which was read or the credibility of what he says in court.

The relevant factors would be whether he was or is testifying because he was or is under pressure or simply trying to please the person questioning him. That is all relevant. But it is a little delicate, and he might be trying to please you now also.

How does one decide that? I do not know.

MR. PELUSO: The only point I am trying to make, Judge, is this man's mental condition at this time and at the time he appeared before the grand jury, I respectfully submit to the Court -- I take this in conjunction with the motion that we earlier made, that his grandjury testimony not be read because we could not properly cross examine this man.

THE COURT: I will make a finding here and now that I am perfectly convinced this man now has ample mental faculties and mental ability to testify on direct and be cross examined. He has indicated that he understands what is going on, he acts alert, he responds

in every way in an intelligent, normal manner.

I am re-enforced in what I felt last night, that the man has problems about his credibility. His outburst this morning about hostility is in itself relevant,and I think it was perfectly appropriate for the jury to hear that, and in fact necessary, because he obviously has -- the jury could conclude that his performance here up to that point was seriously affected by a feeling of hostility towards the government lawyers which caused him perhaps to violate his oath as a witness.

That is the kind of problem we have with this witness. We do not at least at this point have a problem, a mental problem, of any degree which renders him incompetent to testify.

As far as the grand jury, I was not present at the grand jury nor observing him, but this testimony sounds before the grand jury of the same qualify as it appears here, as far as his mental ability. He had made no statement that he was under any more severe problem nine months ago before the grand jury than he is today, so I do not find his grand jury testimony in any way incompetent.

I think he remembers it, I think he can be cross examined about it and cross examined about his

testimony here.

The question is how do you go about developing what you are entitled to developing about factors which would go to the weight of that testimony, the grand jury testimony that was read and this testimony here.

What do you plan, can you just -- I just want to feel our way carefully on that.

MR. PELUSO: In reading the grand jury minutes, Judge, I get the impression, and I feel I am correct, that many of the answers that were elicited from the witness were in fact suggested and put into his mouth.

THE COURT: There was a long question at, I guess, about page 9 or 10 about the beating, and that was a question -- the description was phrased by the government lawyer and he admitted to it.

This man basically is a hostile witness to the government, there is no question about it, and leading him I think was permissible and I think it is basically permissible here.

But the government lawyer in the grand jury kept going over and over the thing, probably more than he needed to, but he went over and over the situation, and there wasn't any question that the man was admitting, at least certainly the grand jury could find and this jury

could find, he was admitting of his own memory the slapping incident.

He had admitted it here.

MR. PELUSO: Judge, I feel the man admitted the slapping, but I feel that he was attempting to testify that he was slapped because of a remark he made and he provoked it and it had nothing to do --

THE COURT: He said it, and that is before the jury. He has explained that.

MR. PELUSO: The way the questions were read from the grand jury minutes I think the jury would get the impression that today he is saying something different from what he said on the prior occasion, and on the prior occasion he said he got slapped in order to force him to pay back the money.

THE COURT: Look, Mr. Peluso, that is a matter of argument. Basically it is a matter of argument. You have the grand jury testimony in. When you get up to sum up before the jury, you will be able to argue from that transcript whatever you can fairly argue. You can argue that he was led, you know, that is fair argument.

I might disagree and the jury might disagree, but that is your argument. You can take that, analyze that from beginning to end. You have got it down in black

and white.

MR. ABZUG: Your Honor, while they are conferring, I realize your Honor is trying to expedite this process, but I just want to make one very short statement for the record.

THE COURT: Let's wait until they are finished so they can hear.

(Pause)

MR. WALLACH: Your Honor, can I just supplement what he said? I am not going to repeat it.

In regard to this witness over here, by him making known his grievance towards the government, it puts us in a very peculiar position, because there is an inference from that, and it is not a question of arguing before the grand jury, that what he told the grand jury was perfectly plausible and truthful and the only reason he told them that is so he would not have to come to court to testify.

The question arises cross examining this witness not as to what he said up here but what he said before the grand jury, and I submit to your Honor one or two theories in regard to that.

While Section 801D(1A), is the area your Honor charted out for this type of testimony, the question

remains that if he said nothing before the jury in the presence of the jury, and the U.S. Attorney sums up the grand jury testimony, these men may be convicted solely on what this witness said before the grand jury. I don't think Congress had that --

THE COURT: I am not even with you. I do not comprehend that at all.

MR. WALLACH: Assuming that the jury does not rely upon this man's testimony given in this court ofhis prior statements to the grand jury, then they may convict the defendants solely on what was brought out on direct examination as to what he said before the grand jury.

There is a question of whether Section 801D(1A) covers that situation.

Number two, we should therefore be allowed to question him in regard to the entire totality of the circumstances that were attendant when he testified before the grand jury, namely whether --

THE COURT: I am not cutting you off. What we recessed on is a question which was a very conclusory kind of question or calling for a conclusion, did you feel that your answers before the grand jury were designed to please the government, that kind of thing.

I was uncertain about whether that kind of conclusory statement was really very helpful and that would be a very good way to approach it.

You can ask him from A to Z about the circumstances leading to his appearance before the grand jury, and that is really the intent of the rule you just referred to.

In fact, I think I would request, just in general, I think it would be better to draw out any facts, you are doing that, basically, you have asked him whether an attorney was there, a doctor was there, get all of the circumstances, you can ask about leading up to this, which would be evidence as to the background, and I think that is a little better than just kind of a blanket question, did he -- how does he view his testimony before the grand jury.

Let's pursue it that way and we will all recess for a few minutes.

Do you have anything more?

MR. ABZUG: Yes, I do, your Honor. I appreciate your Honor's concern, and I agree with your Honor that perhaps the line of questioning is relevant in this case.

The only problem that I have is I was the

government attorney in the grand jury. The witness made a rather vituperative attack on my credibility in the presence of the jury which unfortunately I am not going to be able to go into because I can't interject my own credibility into this trial.

That puts me at a significant disadvantage, but there is nothing really that can be done about it because I am the government attorney here.

I did tell Mrs. Cassese when her husband came down prior to the grand jury -- prior to her husband's grand jury testimony --

THE COURT: Mr. Abzug, I instructed the jury exactly what I feel is the posture of the case right now. This man came to court pursuant to subpoena and took an oath. There was no motion to quash the subpoena, no motion to say that it violated any agreement.

When a man gets on the stand and takes an oath, he is obligated to tell the truth. If he does not because of any feeling of hostility, he is violating his oath, and Ithink he took that seriously and I think that it helped him realize that after he got that admonition.

I am not going to go back into -- I am not going to go back and try the case of Mr. Cassese against you. It has to be gone into further, but I do not think --

lhjw 71 Cassese - cross

MR. ABZUG: I just hope, your Honor, that that is on the record, not having been given --

THE COURT: I do not hold it against you in any way. Let's take a break.

MR. PELUSO: May we, before your Honor leaves, we would like to make an application outside the jury's presence, and that is for the withdrawal of a juror in view of what took place in the courtroom this morning.

THE COURT: That is denied. Motion denied.

(Recess)

end take 1

Pad 2

LHjw 72 Cassese - cross

(In open court - jury present)

THE COURT: You were going to continue, Mr. Peluso.

CONTINUED CROSS EXAMINATION

BY MR. PELUSO:

Q Mr. Cassese, there came a time at one period of time when you were interviewed by an agent or two agents, is that right? Federal agents?

A I believe I was.

Q Do you recall when that conversation or discussion took place between you and the agents?

A Not exactly. I might say about two years ago.

Q Let me ask you this: Did you have more than one discussion with the agents or members of the United States Attorney's office?

A I believe it was one on each occasion.

Q Did you have a discussion with the United States Attorney and/or federal agents before you went into the grand jury to testify?

A I did.

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Why don't you take it one at a time. I will sustain the objection as to form.

Q Prior to going into the grand jury to testify, did you speak with Mr. Abzug?

A I don't think it was Mr. Abzug.

Q Did you speak to Mr. Padgett?

A I believe that was the name of the person. Padgett.

Q He was an assistant United States attorney?

A I believe so.

Q Did you also speak with one or two federal agents?

A I did.

Q During the course of the discussions, did you make it known to them that you at no time felt that you were the victim of an extortion by Mr. Dinino or Mr. DeVito?

A I definitely did.

Q Did you explain to them the circumstances surrounding the loan transactions between you and Mr. Dinino and Mr. DeVito?

A I believe I did.

Q Did you tell the agents that you considered these transactions to be helpful to you?

A I expressed that. I did.

Q When you told that to the agents, were those

answers truthful?

A Yes, they were.

Q Did you tell the agents and/or one of the assistants -- I will take it piecemeal. Withdrawn.

Did you tell the agents that you were never threatened in order to pay back money?

A I was never threatened, never.

Q Did you tell this to the agents?

A I believe I brought it up.

Q Did you tell this to the assistant United States attorney?

A I think I did, yes.

Q Were those answers truthful when you told those answers to the agents and the assistant United States attorney?

A They were true.

Q Did you at any time during the period that you were making these loans and repaying money, did you feel that you were being coerced, threatened?

A I never felt coerced, never felt threatened. I borrowed voluntarily, my own free volition.

Q Did you tell the agents that you spoke to that you resorted to this means of obtaining money because you could not go to banks or any other lending

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE

institutions?

MR. ABZUG: Your Honor, I believe this is what he testified to on direct.

THE COURT: There is no question about this. I think we are getting quite repetitious.

MR. PELUSO: I am saying, Judge, did he before, sometime in the past, before he went to the grand jury, tell this to the agents.

THE COURT: There is no question that he came to these people because he couldn't get loans from banks. I assume he said it whenever he was asked about it. That isn't the issue.

Q When you testified before the grand jury, were you able to make known to the grand jury the entire truth concerning your transactions with Mr. Dinino and Mr. DeVito?

MR. ABZUG: Objection.

THE COURT: I will sustain that objection.

Q Did the U.S. attorney who questioned you before the grand jury ask you questions concerning all of the information you had told him about your transactions with Mr. Dinino and Mr. DeVito?

MR. ABZUG: Objection. Same reason.

THE COURT: Sustained. That is not the

point. The point is the accuracy, truthfulness of what he did say before the grand jury, which was read in court.

This jury is not trying the validity of the grand jury's action. They have been specifically told that they should not and they are not trying whether there was a complete flushing out of everything. That is the purpose of this trial.

The only focus is on the credibility of what he said which was read to this jury. So let's limit it to that, please.

At the time that your glasses were knocked off and you were slapped, I am asking you about your state of mind at that time, sir. Did you feel that that slap was provoked by you or did you feel that that slap was to induce and force you to make a payment?

MR. ABZUG: Objection as to the form, your Honor, and as to relevance.

THE COURT: No, it is certainly relevant. Why don't you take it one step at a time?

Q At the time that you were slapped and your glasses fell from your face, did you feel that that slap was provoked by something you did and said?

A I am certain it was.

Q Is that answer truthful?

A That's the truth, yes. I provoked it.

Q Did you feel that that slap was in order to put fear into you to make a payment?

A No, that was not the reason.

Q Is that answer truthful?

A Pardon?

Q Is that answer truthful?

A Definitely. I never had no fear.

Q Did you not tell the agents who spoke to you that you never had any fear of Mr. DeVito or Mr. Dinino?

MR. ABZUG: Objection, same reason, your Honor. We have been over this. This is his testimony on direct. I don't see what relevance it has what he told the agents two years ago, three years ago or a few minutes ago.

THE COURT: Overruled.

Q Did you not tell that to the agents?

A Well, if the question concerning whether there was any fear on my part was asked --

THE COURT: Do you remember what you told the agents or don't you on that point? Don't you remember?

THE WITNESS: May I have the question repeated?

MR. PELUSO: I will withdraw the question, to

save time.

Q Did you in response to a question put to you before the grand jury by Mr. Abzug state, "I wouldn't borrow from these people if I felt they would use force to collect"?

A Well, that's the way I felt.

MR. ABZUG: Objection, your Honor.

THE COURT: Overruled. I don't think there is really a question about the fact that this was a grand jury testimony. If I am mistaken, correct me.

The authenticity and accuracy of the transcript we apparently concede, right?

MR. PELUSO: I have it here, Judge.

THE COURT: All right, you can just read that question and answer. Do you want to read that?

MR. PELUSO: We would have to start on page 12 and go on to page 13 of the grand jury testimony.

THE COURT: All right, you follow that, Mr. Abzug.

Q Do you remember being asked this question and having made --

THE COURT: Look, we don't need that. The government has read and you can read, as long as it is reasonably related.

MR. ABZUG: Your Honor, may I have a side bar with respect to this, please?

THE COURT: Just show me what you are going to read. I think we don't need a side bar.

MR. PELUSO: Starting right at line 22 and going over to the next page.

THE COURT: How far on the next page?

MR. PELUSO: It is just a matter of a few lines, Judge.

(Pause)

THE COURT: Okay, I will allow that. You just read that.

MR. PELUSO: "Q: But it was your understanding at the time that you were borrowing money from Mr. Dinino that he was a loanshark and that loansharks commonly collect unpaid debts by threats?

"A By force?

"Q By threats and force.

"A Well, if that was so, I wouldn't borrow from these people."

Q Do you remember those questions? Did you make that answer?

A I don't remember it exactly.

THE COURT: Look, I told you, you have a right

to read it. There is no question this is the transcript. You read it. Do you have any other questions?

MR. PELUSO: I have two more lines to read.

"Q Is that your understanding or not?

"A That is right. I wouldn't borrow from these people if I felt they would use force to collect."

THE COURT: Anything else?

MR. PELUSO: Page 15.

"Q Mr. Cassese, in connection with any of the loans that you have testified that you received from Mr. Dinino, did Mr. Dinino or Vinny DeVito ever threaten any of your family in an effort to get you to repay any of these loans?

"A That's what I have been trying to tell you, Mr. Abzug. I have never been threatened, nor anyone in my family has been threatened. I will tell you why, I make my payments when they are due."

THE WITNESS: That's true. It's true.

THE COURT: You read the testimony. Anything else?

MR. PELUSO: "Vinny never directed any threats towards your wife, for example?

"A No, sir.

"Q Not towards you?

"A Truthfully, never.

"Q Do you have any children?

"A Two daughters.

"Q Never threatened any of your daughters?

"A Never, sir, that's the truth."

Q Were those answers truthful?

A Yes, sir.

Q Do you know Mr. Jackson?

A Slightly.

Q Do you know him from the cab place?

A I think I worked there about a month when he started working there. But then I didn't see him no more. I left. I went to work somewhere else.

Q Would you describe Mr. Jackson?

A Would I describe --

Q Can you describe him? About how tall is he?

A I'd say about five foot eight.

Q About how much does he weigh?

A About two hundred.

Q Was he the type of a person who could handle himself?

A Physically?

MR. ABZUG: Objection.

THE COURT: Sustained.

Q Have you ever seen Mr. Jackson use rough or profane language in talking to anyone?

MR. ABZUG: Objection.

THE COURT: Sustained.

MR. PELUSO: No further questions.

THE COURT: Do you have anything else?

MR. ABZUG: At this time, if I can get a stipulation from both defense counsel, I would just merely like to offer the entire grand jury testimony of Mr. Cassese into evidence. Most of it has been read.

MR. PELUSO: May we approach the side bar, Judge?

THE COURT: Do you object to that?

MR. PELUSO: Yes, Judge.

(At the side bar)

THE COURT: A good deal has been read. What is it that --

MR. ABZUG: Here is the point, your Honor. The defense has made a contention that the government did not ask certain questions and that certain things were omitted from the grand jury transcript.

I merely think that there may be some confusion on the part of the jury as to what actually transpired in the grand jury.

Therefore, I respectfully move to admit the entire transcript. They can see what the man testified to and any exculpatory things that defense counsel might want to bring out -- it has been chopped up. Part of it were read and parts haven't.

I think the jury now is under the erroneous impression that perhaps the government wasn't reading to Mr. Cassese certain portions relating to the slapping incident. That isn't so.

Rather than ask to read the entire thing to Mr. Cassese on redirect, which is what I would propose to do, your Honor, I would just move to admit it into evidence.

THE COURT: I think it is a pretty good idea, frankly, it is a matter of clarity. If there is a particular point in here that is prejudicial, you point that out to me.

I think the way the examination of this witness shaped up, the grand jury testimony was essential and important in the examination of this man. Large portions were read. I think it would just be clearer ultimately if the jury had this. He can read it all.

Is there any difference in form?

MR. WALLACH: Judge, putting in all the grand

jury minutes in evidence means they could actually read that entire grand jury testimony and that can be the sole testimony that convicts --

THE COURT: Look, we have been over this point again and again. I interpret that rule of the New Rules of Evidence to permit introduction into evidence --

MR. WALLISH: I have the New Rules of Evidence here, Judge. It doesn't say that. You can use my copy, Judge. I have it here.

THE COURT: I have held and I hold again that this is not barred by the hearsay rule. The statement covers an oral or written assertion. Let's not go over old ground.

Is there any difference that you want to make as to the form, reading versus admitting the document? I want to know the answer to my last question.

Is there any difference as to the form? Do you object to having it in in its transcript form?

MR. PELUSO: Judge, I would say this. If there were questions asked, the questions would be used either to refresh the witness' recollection or where there has been an inconsistency. We are not doing that here, Judge.

THE COURT: We are long past what you are

talking about.

MR. PELUSO: So I see no purpose at this time, Judge, just to throw the whole thing in. It serves only one purpose.

THE COURT: You are not answering my question. I have held that the grand jury testimony of the witness is not hearsay and I have ruled on Rule 801D(1). This means that the government or you can read any part which is relevant and not excluded by some other rule.

Substantial amounts have been read by the government, substantial amounts or parts of it have been read by you.

Now, the government would propose for the purposes of clarity to read the whole thing. The government offers as an alternative to save time to simply introduce the transcript.

I asked you one narrow question, do you -- assuming that the government would stand here and read the testimony, do you object to having it going in in written form to save us time?

Do you have that objection?

MR. PELUSO: I would, Judge.

THE COURT: All right, he can stand there and read it.

MR. WALLACH: Then we are going to have to cross examine the witness as to the other matters --

THE COURT: You do what you wish to do. Read it.

(In open court)

THE COURT: Ladies and gentlemen, the grand jury testimony of Mr. Cassese is rather brief. Certain portions of it were read by the government lawyer, one or two other portions were read by the defense counsel.

The government suggests that for the sake of clarity you should have the entire testimony before you, and I am going to permit that to be done.

So you just read it. It won't take long. Read the whole testimony.

MR. ABZUG: This is the grand jury testimony of Philip Cassese given on March 7, 1975 at 11:05 a.m. It reads as follows:

"Phillip Cassese, called as a witness by the grand jury"--

MR. PELUSO: Judge, if we are going to read it, he should read the whole thing.

MR. ABZUG: I am reading the whole thing, your Honor.

MR. PELUSO: Testified as follows, then we

have examination by Mr. Abzug --

MR. ABZUG: I haven't reached that point, your Honor.

THE COURT: He is going to read the whole thing. Go ahead.

MR. ABZUG: "Phillip Cassese, called as a witness by the grand jury, being first duly sworn by the foreman, testified as follows:

"EXAMINATION BY MR. ABZUG:

"Q State and spell your name, please.

"A Phillip Cassese, C-a-s-s-e-s-e.

"Q Mr. Cassese, my name is Michael B. Abzug. I'm a Special Attorney for the Department of Justice. This grand jury has been convened and you have been subpoenaed before it to give testimony with respect to certain violations of federal law. Specifically, those code provisions dealing with extortionate credit transactions which is commonly known as loansharking.

"Mr. Cassese, in approximately one year ago do you recall having a meeting with Special Attorney Charles Padgett at 26 Federal Plaza?

"A Yes, I do.

"Q And do you recall who was present at that interview besides yourself and Mr. Padgett?

"A Yes. My wife and -- I don't remember the other man's name.

"Q There was another man present?

"A I think so. I think there was another man present, yes.

"Q Do you recall what his name was?

"A No, I don't, sir.

"Q Do you recall whether he was an agent of the FBI?

"A I believe he was an agent of the FBI.

"Q And could you please describe to the grand jury what the substance of this meeting was, what conversations transpired between you and Mr. Padgett?

"A Well, it was sort of a questioning, as to whether I had any association with certain people.

"Q By certain people are you referring to a man by the name of John Dinino and Vincent DeVito?

"A Yes, sir.

"Q Do you recall telling Mr. Padgett at that that you met Mr. Dinino in 1970 through a man by the name of Sam Hilton at Al's Taxi?

"A I do.

"Q And do you further recall telling Mr. Padgett that you obtained approximately 15 loans from Mr. Dinino

between the time of 1970 and 1973?

"A May I ask a question?

"Q Well, answer my question firm.

"A Well, I have to ask you a question.

"Q What's your question?

"A This information, this question which you ask me, is it -- is it that I have already answered that question to this Mr. Padgett a year ago?

"Q Yes, I'm asking you whether you recall telling Mr. Padgett these things.

"A Well, I don't recall word for word, I mean.

"Q But do you recall generally telling him that you obtained certain loans from Mr. Dinino between the periods --

"A If my testimony or my answer to these questions at the time when I was interviewed by Mr. Padgett, if it states that I did, then I must have.

"Q I'm not asking you what it states on a piece of paper. I'm asking you what your recollection is now. I'm asking you whether now today you have a recollection of telling Mr. Padgett that you obtained loans from Mr. Dinino.

"A Well, like I say, if the question was asked and I replied yes it must be so.

"Q I'm not asking you that. I'm going to ask you again. Do you recall telling Mr. Padgett that you --

"A Not word for word, sir.

"Q Do you recall in a general manner telling Mr. Padgett that you obtained loans from Mr. Dinino? I'm not asking you to repeat what your conversation with Mr. Padgett was word for word. I'm asking you whether you recall as a general matter discussing Mr. Dinino and the fact that you had obtained loans from Mr. Dinino. Do you recall that?

"A I would say yes.

"Q And do you recall telling him that these loans varied in amounts from approximately $50 to $150, do you recall telling Mr. Padgett that?

"A I would say yes, with one condition.

"Q What is that condition, sir?

"A That whatever money I borrowed from this so-called John was upon my request. In other words, I needed the money and I borrowed it.

"Q I understand that. Do you recall telling Mr. Padgett that these loans were borrowed, on what's commonly known as a 6 for 5 basis, in other words, if you borrowed $5 from Mr. Dinino, you would obtain -- you would have to pay back $6?

"A Well, I do, I will say this, that whatever I borrowed, and whatever I agreed to pay, was strictly on my own free volition.

"Q Yes, I'm not asking you whether you voluntarily gave the money, excuse me, borrowed the money --

"A If I borrowed, I borrowed voluntarily. I wasn't forced to borrow.

"Q I understand that. But as a condition of these loans that you borrowed from Mr. Dinino, do you recall agreeing that for every $5 you borrowed you would have to pay back 6?

"A Whatever the agreement was between me and the so-called John, was not forced on me. That's what I'm trying to say.

"Q I ask you again. Now listen to me carefully. I'm asking you whether as a condition of these agreements, I understand that this is a voluntary agreement, but as a condition of these agreements did you agree to pay Mr. Dinino $6 back for every $5 that you borrowed?

"A I did. Voluntarily. Wasn't forced upon me. I couldn't borrow from a bank. I had -- my credit wasn't good. I needed the money.

"Q Just respond to my questions, please. Okay. In the event -- well, strike that.

"As a further condition of these loans, you were to repay Mr. Dinino a certain amount of money every week, were you not?

"A Yes, upon failure to make payments as agreed, each week.

"Q Well, I'm not talking about if you missed the payments. I'm asking you now whether as a condition of these loans you had to make weekly payments back to Mr. Dinino.

"A Yes.

"Q And if you missed one of these payments you had to pay an additional sum of money, did you not?

"A Yes. I would have to pay, what's known as a penalty.

"Q Vig?

"A Or as you would say, vig, yes. To which I also agreed.

"Q I understand that. This penalty didn't reduce the principal of the loan if you -- is that correct?

"A That's right.

"Q So in other words, if you borrowed $50 from Mr. Dinino or the agreement that you would make weekly payments of a certain amount and you missed one of those payments you would have to pay Mr. Dinino, for example,

$3 of vig and that would reduce the principal of the $50 loan, would it not?

"A It would not reduce the principal.

"Q Thank you.

"And you made these payments back to Mr. Dinino, is that correct?

"A I did.

"Q In addition to making payments back to Mr. Dinino, did you make payments back to a man known to you as Vinny DeVito?

"A I did.

"Q Was he known to you as Vinny DeVito?

"A Just as Vinny.

"Q And approximately what periods did these loans occur over, a period of approximately three years between 1970 and 1973?

"A I would say about three years.

"Q And do you know what the relationship was between this man known to you as Vinny and Mr. Dinino, were they partners, for example?

"A That I don't know.

"Q Well, was it your impression that Vinny was a friend of Mr. Dinino's?

"A Oh, yes. They were -- they knew each other.

They were friendly.

"Q You saw them together?

"A No, I never saw them together. I either seen one or the other.

"Q How did you know they were friendly?

"A Well, the fact that I believe John -- I believe John told me that Vinny would be coming around for the collections.

"Q In other words, John told you that in the event he wasn't there to make the payment you should make the payment to Vinny?

"A That's right.

"Q Now, Mr. Cassese, directing your attention to the late spring or early summer of 1972, that's approximately three years ago and we are talking about approximate times now. I'm sure the grand jury understands that.

"Do you recall an incident where this man known to you as Vinny came to Carter Cabs where you were employed and to collect one of these payments on behalf of John Dinino?

"A Well, yes, he was there a number of times to collect instead of Vinny coming there.

"Q Right. And directing your attention to the specific time period, do you recall Vinny coming to Carter

Cabs and asking you to make this payment to John Dinino and you told Vinny at that time that the loan that you had made for Mr. Dinino had already been complete ard that you refused to pay the loan and that Vinny slapped you in the face, knocked off your glasses and told you that you would pay? Do you recall that incident?

"A Well, I -- I recall. It was a misunderstanding.

"Q Do you recall being slapped?

"A I do.

"Q By Vinny?

"A I do.

"Q And this was in connection with a loan payment that Mr. -- that you were to pay to John Dinino, right?

"A I believe it had something to do with that.

"Q Did you give Vinny the amount of money that you owed John at that time?

"A I did.

"Q And this is in response to the slapping?

"A Well, I -- like I say, it was a misunderstanding. I felt that I had made that payment to John.

"Q Right.

"A And Vinny disagreed with me.

"Q And he slapped you?

"A So I -- so I, without thought, said I ain't

"A I did, yes. I did repay the loan.

"Q Did you know at the time you were taking loans out from Mr. Dinino that he is what is commonly known as a loanshark?

"A Yes, I was aware of that.

"Q And what does the term loanshark mean to you?

"A Loanshark to me is going to a person and borrowing money.

"Q What happens if you don't repay a loanshark?

"A What happens?

"Q What happens?

"A Well, as far as I know there's been a lot of talk about threats and so forth and so on, which I never -- come up against.

"Q Except for this one slapping incident?

"A Yes.

"Q But it was your understanding at the time that you were borrowing money from Mr. Dinino that he was a loanshark and that loansharks commonly collect unpaid debts by threats?

"A By force.

"Q By threats and force?

"A Well, if that was so, I wouldn't borrow from

these people.

"Q Is that your understanding or not?

"A That is right. I wouldn't borrow from these people if I felt they would use force to collect.

"Q Yes, but it was your understanding, was it not, that loansharks commonly collect unpaid loans by force and threats of force?

"A Well, I might say that is a storybook tale, or also motion picture tales. In real life I have never heard of any such thing happening during the number of years in which I borrowed money from these so-called shylocks.

"Q This is just something that you have -- that you think is a myth?

"A Well, it could be true, but I have never actually witnessed such an incident. As to what -- I mean -- and I don't believe that there is an awful lot of truth in that particular, as you say, statement or idea.

"Q Well --

"A You see, if you want me to explain how they operate today, I can explain to you.

"Q No, I don't --

"A From experience.

"Q What I want to ask you is whether the slapping incident that you testified to before this grand jury changed your opinion of loansharks.

"A No, it didn't.

"Q It did not?

"A No. The slapping was a misunderstanding. I might have said something to infuriate this particular person, sort of a personal offensive remark.

"Q Well, you didn't -- did that in fact occur?

"A I did, yes. I personally offended him.

"Q By telling him that you, that --

"A That I wouldn't pay him.

"Q That you already paid the loan and you wouldn't pay?

"A That I wouldn't pay any more. I personally offended the man. I was never threatened.

"Mr. Abzug; Mr. Foreman, would you please temporarily excuse the witness?

"The Foreman: You are excused temporarily.

"The Witness; Wait outside?

"The Foreman: Yes.

"(Witness excused)

"(Witness recalled)

"The Foreman: You are still under oath,

Mr. Cassese.

"Q Mr. Cassese, in connection with any of the loans that you testified that you received from Mr. Dinino, did Mr. Dinino or Vinny DeVito ever threaten any of your family in an effort to get you to repay any of these loans?

"A That's what I've been trying to tell you, Mr. Abzug. I've never been threatened. Nor anyone in my family has been threatened. I'll tell you why. I made my payments when they were due.

"Q Vinny never directed any threats towards your wife, for example?

"A No, sir.

"Q Not towards you?

"A Truthfully, never.

"Q Do you have any children?

"A Two daughters.

"Q Never threatened any of your daughters?

"A Never, sir. Never. That's the truth.

"Mr. Abzug; Thank you.

"Would you permanently excuse the witness?

"The Foreman: You are permanently excused. You are excused.

"(Witness excused)."

THE COURT: Does that complete the reading?

MR. ABZUG: Yes, your Honor, it does.

THE COURT: Is there anything more for this witness?

MR. ABZUG: Not from the government.

MR. BLOUSTEIN: I have nothing further.

MR. PELUSO: I have no further questions.

THE COURT: You are excused permanently.

(Witness excused)

THE COURT: We will recess now until 2:15.

(Luncheon recess)

end am

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AFTERNOON SESSION

2:25 P.M.

(In open court - jury present)

MR. ABZUG: The government calls Sherman Ronson.

SHERMAN A. RONSON, called as a witness by the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

XXX BY MR. ABZUG:

Q Mr. Ronson, how old are you, sir?

A Forty-six.

Q Are you married, sir?

A Yes, I am.

Q For how long have you been married?

A This December will be twenty-three years.

Q I am sorry, sir?

A This month is twenty-three years.

Q Is your wife currently employed?

A Sporadically, yes, sir.

Q In what capacity, sir?

A She is a per diem teacher in the New York City

school system.

Q Does she work in any one particular place, sir?

A Junior High School 80 in the Bronx.

Q How long has she been employed in that capacity, sir?

A Ever since our married life.

Q That would be twenty-three years, sir?

A Approximately, sir.

Q Directing your attention to the time period extending from 1970 to 1973, approximately how much was your wife making each day that she worked?

A Approximately $69 a day when she worked.

Q Do you have any children, sir?

A Yes, I do.

Q How many, sir?

A Three.

Q Could you give the jury their ages, please?

A Yes, twenty, sixteen and eight.

Q Mr. Ronson, are you currently employed?

A Yes, I am.

Q Where, sir?

A New York City Taxi and Limousine Commission.

Q In what capacity, sir?

A I am a taxi inspector in the enforcement division.

Q How long have you worked in that capacity, sir?

A Since December of 1971.

Q Prior to your employment with the Taxi Commission, where were you employed?

A Carter Cab Service.

Q What is that, sir?

A 5674 Mosholu Avenue. It was then.

Q How long were you employed there, sir?

A From January, 1969 until December, '71.

Q In what capacity?

A As a chauffeur.

Q Did you have hours?

A Yes. I worked from 6:00 o'clock in the morning to approximately 6:00 in the evening, five days a week.

Q I am sorry, how many days a week?

A Generally five days a week.

Q Approximately what was your weekly salary during the time period that you worked at Carter Cab?

A Approximately $250 a week. I worked on a commission basis.

Q How is that commission computed?

A I would get 75 percent of my bookings and turn over 25 percent to the company.

Q Other than your wife's income and the income you just testified to to the jury, did your family have any other source of income during the time you were working for Carter Cab?

A No, sir.

Q Do you know a man by the name of John Dinino?

A Yes, I do.

Q Is Mr. Dinino in the courtroom today?

A Yes, he is.

Q Would you identify him for the jury?

A Right, the gentleman right here.

MR. ABZUG: Let the record reflect that the witness has identified the defendant Dinino.

Q When did you first meet the defendant Dinino ?

A In January of '69.

Q Where did you meet him, sir?

A At Carter Cab Service.

Q Could you describe the circumstances --

THE COURT: What date did you say?

THE WITNESS: January, 1969, your Honor.

Q Approximately how long was that after you began to work for Carter Cab?

A About a week after I worked there.

Q Can you describe the circumstances leading up to your first meeting with the defendant?

A Yes, sir. I saw him about a week before that and I had asked one of the drivers, I says, "Is he a new driver," and he said "No." He told me that he loans money, he was a shylock.

Q Would you keep your voice up a little bit, Mr. Ronson, please.

What happened after that, sir?

A I was a gambler myself, I am a compulsive gambler, and I was gambling, and I needed money, and I approached him and asked him if I could borrow money.

Q Where did you approach him, sir?

A At Carter Cab.

Q What did he say?

A He told me, he says "You will have to wait a week and I will let you know next week."

Q Approximately what time was this conversation?

A Approximately between 5:30, 5:00 -- between 5:00 and 6:00 o'clock.

Q Prior to your first conversation with the defendant, did you see him at Carter Cab?

A Pardon me?

Q Prior to your first conversation with the defendant, did you see him in Carter Cab?

A Yes. I stated that, about a week before, when I first came in.

Q What if anything was he doing at Carter Cab?

A He was conversing with the other drivers there.

Q What did you observe, sir?

A At one point I saw money changing hands.

Q Who were some of the individuals that the defendant Dinino met at Carter Cab?

A Phil Cassese, Louie Materasso, Ronnie Levine, Seymour Schwartz, Billy Ferrare.

Q After your first conversation with the defendant in January of '69, did you meet him again?

A Yes, I did.

Q Where did you meet him, sir?

A At Carter Cab.

Q What happened then, sir?

A I asked him again about the money, I wanted to borrow the money, $100, it was, and he said "Okay, you can have it."

Q Did he specify any terms of repayment, sir?

A Yes. He said it would be $10 a week for twelve

weeks.

Q This conversation followed the first conversation by how long, sir?

A One week.

Q How did he give you the $100?

A In cash.

Q Did you manage to repay the $100?

A Yes, I did.

Q How long did it take you, sir?

A It took me twelve weeks.

Q When did you repay him, sir?

A It was towards the end of March. The end of March.

Q The repayments, on what day were they made?

A On Friday.

Q You say you met him again in March of 1970, is that correct? March, 1969?

A Right. After I finished paying him, yes.

Q What if anything happened on the second occasion?

A I wanted to borrow some more money.

THE COURT: I am sorry. I got lost. You repaid the first loan, right?

THE WITNESS: Yes, your Honor.

THE COURT: Then you made another loan?

THE WITNESS: I made another loan.

THE COURT: From Dinino, and about when was that, did you say?

THE WITNESS: The end of March.

THE COURT: How much was that?

THE WITNESS: The second one was $200.

Q What if anything did Mr. Dinino say to you when you borrowed the second amount?

A He told me, he says "You know the arrangements, it will be $20 a week for twelve weeks."

Q Did he give you the $200 at that time, sir?

A I don't follow the continuity of this.

Q When you asked him for the second loan, the $200 --

A He told me I will let you know the following week.

Q Following that conversation, sir, did you meet with him again?

A Yes, I did.

Q Where?

A At Carter Cab Service.

Q When, sir?

A On a Friday night.

Q Who if anybody was there when you met him?

A The same drivers that I had previously stated. You want the names again?

Q What if anything did you say to him and he say to you?

A Yes, I asked him "Can I get the money that I asked you for last week," and he says, "Yes, you can," and gave it to me in cash.

Q Following the second loan from Mr. Dinino in March of 1969, did you borrow any more money from him, sir?

A Subsequently, yes, I did.

Q How many more loans did you receive, if any, from John Dinino following March, 1969?

A Approximately eight or nine loans.

Q Over what period of time, sir?

A From '69 through the last part of '71.

Q What were the amounts of these loans, sir?

A Generally $200, one time I think I got $300. Generally in that neighborhood.

Q At approximately what intervals did these reloans occur, sir?

A A lot of them I pyramided because I hadn't finished the loan, so I asked for more, he would give me

some more.

THE COURT: Keep your voice up just a little bit, please.

Q How much time would elapse before you would pyramid on one of these loans?

A Generally around halfway through with the loan.

Q These loans were for what period of time, sir?

A Well, it would start all over again. Once I took a new loan, they just added to it and the payments became increased.

Q Where did you receive these loans?

A At Carter Cabs.

Q What day did you receive them, sir?

A On Fridays, generally.

THE COURT: Let me understand. You would borrow, say, $200 and then you would be about halfway through the payments?

THE WITNESS: Right.

THE COURT: Then you would ask Dinino for another loan?

THE WITNESS: Additional money, your Honor.

THE COURT: Would that be to bring it up to --

THE WITNESS: Occasionally, yes, it would bring it up to and sometimes beyond.

THE COURT: Did you ever -- what was the biggest balance, so to speak, that you ever accumulated?

THE WITNESS: In what period of time, sir?

THE COURT: This time we are talking about, '69 through '71.

THE WITNESS: Approximately $600.

Q When you received these loans, sir, did you have a conversation with John Dinino?

A Yes, I did.

Q What would he say to you?

A He says, "Well, you know the arrangements, you got to make your payments on time."

Q During the period extending from April of '69 to April of '70, did you observe Mr. Dinino meet with other individuals at Carter Cab?

A Yes, sir, I did.

Q Would you give the names to the jury, please?

A Phil Cassese, Ronnie Levine, Louie Materasso, Billy Ferrare --

Q When would these meetings occur, sir?

A Generally on Friday, but occasionally I saw John Wednesday, sometimes on Monday, but not very

frequently. I was on the road with the car.

Q What if anything would transpire at these meetings between Mr. Dinino and the other employees of Carter Cab Company?

A Well, they would meet and I saw the transference of money.

Q Did you ever overhear any of the conversations, sir?

A Very rarely.

Q The ones that you did, sir, would you tell the jury what you overheard?

A At one point I guess there was a heated argument about something, I don't know what it was about.

MR. BLOUSTEIN: I object to anything that he doesn't know anything about.

THE COURT: Was it involving Mr. Dinino?

THE WITNESS: Yes.

THE COURT: Objection overruled.

Q Mr. Ronson, do you recall any specific words that were said on these occasions where you would see Mr. Dinino meet with one of the other employees of Carter Cab?

A Out of my own recollection, maybe once I heard "Cut out the bullshit."

Q To whom was that statement made, sir, do you recall?

A I do not recall.

Q Was it one of the employees of Carter Cab?

A I would assume so. There was nobody else in there.

Q Directing your attention --

MR. PELUSO: Judge, I am going to object to what he assumes.

THE COURT: Overruled. Was this statement made -- who made this statement you just said?

THE WITNESS: "Cut out the bullshit"?

THE COURT: Yes.

THE WITNESS: John Dinino.

Q Directing your attention to approximately April of 1970, at that period, sir, how much did you owe Mr. Dinino?

A April, 1970, I think it was in the neighborhood of $400. Around there.

THE COURT: Keep your voice up, please.

Q How much, sir?

A Approximately $400.

Q What if anything were you paying Mr. Dinino from April of '69 to April of '70? How much were your

payments, sir?

A In the neighborhood between 40 and $50 a week.

Q When would you make these payments, sir?

A Generally on a Friday night.

Q Where, sir?

A At Carter Cab Service.

Q Did you ever miss a payment?

A Yes, I did.

Q What if anything would happen when you would miss a payment, sir?

A Johnny called my house once, twice.

Q When he first called, what happened when he first called your house?

A He spoke to my wife.

Q Did you have a subsequent conversation with your wife?

A Yes, I did.

Q What were your emotions?

A She said to me --

MR. BLOUSTEIN: I object to what his wife said to him.

MR. ABZUG: It bears on the witness' state of mind, your Honor.

(At the side bar)

THE COURT: Are you going to call the wife?

MR. ABZUG: No, your Honor, I am not.

THE COURT: Do you contend that a threat was made to the wife?

MR. ABZUG: No, your Honor, I do not.

THE COURT: What will the testimony be?

MR. ABZUG: After Mr. Dinino first called Mr. Ronson's house following the time that he missed a payment, he had a conversation with his wife in which his wife inquired who was the person that called.

Mr. Ronson was extremely embarrassed and upset because he didn't want his wife to know that he was borrowing from loansharks.

Subsequently he had a conversation with Mr. Dinino in which he told Mr. Dinino not to call his house again, pleaded with him not to call his house again.

Subsequent to that conversation Mr. Ronson missed a payment again and Mr. Dinino called his house again and spoke to his wife.

Following that conversation Mr. Ronson had a conversation with John Dinino in which he told him again, "Please don't call my house."

Mr. Dinino responded "I will keep calling your house until you agree not to miss any payments," which

is definitely a threat to the man's reputation, your Honor.

That's how I would characterize it.

THE COURT: I do not think there is any problem with the line of proof.

MR. WALLACH: We object, your Honor.

THE COURT: Okay.

(In open court)

BY MR. ABZUG:

Q Following Mr. Dinino's telephone call to your wife, you had a conversation with your wife, didn't you, sir?

A Yes, I did.

Q Could you tell the jury about the nature of that conversation --

MR. BLOUSTEIN: I object.

THE COURT: Overruled.

A My wife asked me who was that on the phone, and I told her it was somebody from business. I didn't want her to know that I was borrowing money.

Q Following that conversation, what were your emotions at that time, sir?

MR. WALLACH: Objection, your Honor.

THE COURT: Overruled.

A I felt angry and a little bit apprehensive.

Q Following that conversation with your wife did you miss any payments?

A Yes, I did.

Q Strike that and let me rephrase the question.

Following that conversation you had with your wife, did you have another conversation with Mr. Dinino?

A Yes, I did.

Q Approximately how long between your conversation with your wife did your conversation with Mr. Dinino take place? What time elapsed?

A A few days.

Q Where did the conversation take place?

A At Carter Car Service.

Q What did he say to you and what did you say to him?

A I asked him not to call my house again, that I would make my payments on time.

Q Did you specify why you didn't want him calling your house again?

MR. BLOUSTEIN: Objection.

THE COURT: Overruled.

A Because I didn't want her involved in this and I didn't want her to know what I was doing.

Q Following that conversation with Mr. Dinino, did you miss any more payments?

A Yes, I did.

Q What happened then?

A He called again.

Q Who did he speak to, sir?

A My wife.

Q Did you have a conversation with your wife after that?

A Yes, I did.

Q Could you tell the jury what the nature of that conversation with your wife was?

A She asked me --

MR. WALLACH: We object, your Honor.

THE COURT: Overruled.

A She asked me, "What does he want, who is he, do you owe him any money?"

Q What did you say, sir?

A I believe I admitted to her at the time that I did.

Q Following this conversation, did you have another conversation with Mr. Dinino?

A Yes, I did.

Q What period of time elapsed between the second

conversation with your wife and the second conversation with Mr. Dinino?

A Approximately a week.

Q Where did the conversation take place?

A At Carter Car Service.

Q What day, sir, do you recall?

A It might have been on a Wednesday, but it was generally on a Friday that I saw him.

Q What did Mr. Dinino say to you and what did you say to Mr. Dinino?

A I told him that I would do my best to make my payments on time. Please don't call my house any more.

Q What did Mr. Dinino say?

A He said, "If you make your payments on time, you won't have me -- I won't make any calls to your house."

Q Did there come a time when you had a discussion about your ability to make payments with Mr. Dinino?

A That's correct.

Q When did this conversation take place?

A The approximate date?

Q Yes. What part of the year?

A That was, let me see --

Q Would it be 1971, sir?

A It was the early part of '71, yes.

Q Where did you have this conversation?

A At Carter Cab.

Q Who was there, sir?

A The drivers, most of them, myself, John.

Q What did he say to you and what did you say to him?

A I told him I was finding it very difficult to keep up payments, I couldn't keep it up.

Q What did he say?

THE COURT: How much were you owing at this time in payments? About how much per week?

THE WITNESS: I was giving him approximately $50 a week.

Q What did he say when you told him you couldn't pay him, couldn't make the payments?

A He said if you can't make a payment, you have to give me the vig on it, the vigorish.

Q What is vig, sir?

A It is the penalty for not making a payment, I would have to give him a $10 bill.

Q How long did you make these vig payments, sir?

A Sporadically off and on.

Q For what period of time, sir?

A From the beginning of '71 until May of '71.

Q Did there come a time when you couldn't pay Mr. Dinino any vig?

A That happened once, yes, once or twice.

Q Did you have a conversation with Mr. Dinino?

A Yes, I did.

Q What if anything was said to you and what did you say to him?

A He told me, he says "You are going to have to either make a payment or make the vig, one or the other, and cut out the crap."

Q Following that conversation, did you make vig payments?

A Yes, I did.

Q Why, sir?

A Why?

Q Why?

A Well, first of all, for whatever my credit was worth, I was still gambling, and for what my credit was worth I wanted to keep it somewhat good, and also I had in the back of my mind that every time I borrowed money from Mr. Dinino that he made me wait a week, and I thought there might be somebody else behind it, or something like that.

MR. BLOUSTEIN: I didn't hear that.

THE COURT: Let's have the reporter read it.

(Record read)

MR. WALLACH: Objection.

THE COURT: Overruled.

Q Did there come a time in April of 1971 when you could no longer pay Mr. Dinino?

A Yes, there did come a time.

Q What happened then, sir?

A Mr. DeVito came in his place.

Q Is Mr. DeVito in the courtroom today?

A Yes, sir, he is.

Q Could you identify him for the jury?

A The gentleman over here.

MR. ABZUG: Let the record reflect that the witness has identified the defendant DeVito.

Q Did you have a conversation with Mr. DeVito?

A Yes, I did.

Q What did Mr. DeVito say to you?

A He said, "John won't be here for a while, I will be taking over for him."

Q Following your meeting with Vinny DeVito in April of 1971, did you have any other meetings with him, sir?

A Yes, I did.

Q Where were these meetings?

A At Carter Car Service.

Q When, sir?

A Generally on Friday nights.

Q What if anything would transpire at these meetings?

A I was giving -- making juice payments because I wasn't able to make --

MR. BLOUSTEIN: Your Honor, I have difficulty hearing. He tails off.

THE COURT: Go a little slowly. Keep your voice up, please.

A (Continuing) I was making vigorish payments. Occasionally I would make a principal payment.

Q How much were your principal payments at this time, sir?

A I believe they were about $40 a week at the time.

Q Did there come a time when your principal payments of $40 were reduced?

A Yes.

Q When was that, sir?

A Approximately about two months after Vinny

started coming around.

Q Did you have a conversation with Mr. DeVito about the reduction of the interest payments?

A Yes. I told him I found it very difficult to make those payments, and could he please have it reduced because I couldn't meet them.

Q What did Mr. DeVito respond?

A He said, "I will check it out for you and see what I can do for you."

Q Did you have another conversation with Mr. DeVito after that?

A Yes.

Q What was said?

A He says, "We are going to reduce it, we will reduce it to $30 a week."

Q Did you know who Mr. DeVito was referring to when he said "We are going to reduce it to $30 a week"?

A No, sir.

Q Why did you pay Mr. DeVito?

A Why did I pay Mr. DeVito?

Q Yes.

A Well, he took over -- he was John's partner.

MR. WALLACH: Your Honor, I object to that.

THE COURT: Overruled.

Q Following this conversation with Mr. DeVito and I guess that would be in July of 1971, how long did you make the $30 payments?

THE COURT: I don't know -- you are not the witness, how do you guess it will be July?

MR. ABZUG: I am sorry. The witness testified that he had this conversation two months after he first met with Mr. DeVito.

THE COURT: Oh, I missed that. Was it two months after you met?

THE WITNESS: Yes, your Honor. Approximately.

THE COURT: You met Mr. DeVito in April?

THE WITNESS: Approximately April, May, yes.

THE COURT: So it would be June, July, two months after that would be June or July.

Okay, go ahead.

THE WITNESS: Your Honor, I just want to explain something. It is like five years ago. It is difficult to remember.

THE COURT: I understand.

Q How long did you make the $30 payments to Mr. DeVito after you had this conversation with him in approximately July of 1971?

A Up until approximately September or October

lhjw 127 Ronson - direct

of '71.

Q At that time, sir, what happened?

A At that time I just couldn't make it any more. I had other obligations I had to meet, I wasn't solely in debt to Mr. DeVito, and I was being pressed by all kinds of bills from the outside, legal ones, and I just told him, I said, "I can't meet it any more. I just can't make it."

THE COURT: You told who?

THE WITNESS: Mr. DeVito.

Q What did Mr. DeVito do?

A He said, "Well, what do you want to do?"

So under my own insistence, I said, "Look," at the time the amount of money was approximately $900, in that vicinity, I says, "Look, I will double the amount of money that I owe you, let me pay it off at $10 a week."

Q What did Mr. DeVito say to that?

A He said let me check it out and I will let you know next week.

Q Did you have a conversation with Mr. DeVito after that?

A Yes, I did.

Q What was the nature of that conversation, sir?

A I asked him about the arrangement that I wanted

to make.

Q What did he say?

A He says, "Okay, we will go along with it. You pay us $10 a week."

Q It was $10 a week on what balance, sir?

A On $1800. Approximately $1800.

Q How long were you to pay this $10?

A Up until the middle of '73.

Q Did you make these payments, sir?

A Yes.

Q To whom did you make the payments?

A Mostly to John.

Q You are speaking of Mr. Dinino?

A Mr.Dinino.

Q Where would you make these payments, sir?

A At my house.

MR. ABZUG: I have no further questions.

CROSS EXAMINATION

BY MR. BLOUSTEIN:

Q Mr. Ronson, these money transactions that you described to us, were they the first times that you ever borrowed from private people?

A No, sir.

Q You have been borrowing from moneylenders for

a long time?

A Yes, sir, I have.

Q Did your wife know about that?

A At the time I borrowed from other people?

Q Yes.

A On occasion she did, yes.

Q She knew you were a compulsive gambler?

A She suspected that I was.

Q And that you were gambling the money away?

A Yes.

Q You gambled her money as well as your own money?

A Yes, sir, I did.

Q Are you still a compulsive gambler?

A Yes, sir, but I am not gambling. I am a compulsive gambler but I am not gambling. I belong to Gamblers Anonymous.

Q You sought Mr. Dinino out to borrow money from him, didn't you?

A Yes, sir.

Q At that time you deemed it a favor for him to give it to you?

A I needed it. I wanted to gamble and I was happy to get it.

Q He didn't twist your arm to give it to you, did he?

A No, sir.

Q Did he ever make any threats to you?

A Bodily threats or anything like that?

Q Anything, yes.

A No, sir.

Q Was your relationship with him good for the entire period that you described to the jury?

A By and large, outside of the few incidents that I related, yes.

Q You mean other than you didn't like the fact that he called your home?

A Yes, sir.

Q You never saw him hit anybody, did you?

A No, sir.

THE COURT: I did not get your -- did you say that he never made any threats of any kind to you or did you mean just bodily threats? I did not quite understand.

THE WITNESS: I said bodily threats.

THE COURT: He never made any bodily threats?

THE WITNESS: No.

Q Did he make any other kind of threats?

A I just don't understand the question.

Q You answered his Honor, you said he made no bodily threats.

Does that imply that there are any other kind of threats?

A No.

Q You knew other people who borrowed money from Mr. Dinino?

A Yes, sir.

Q Did you ever know him to make any other threats -- any threats to any other people?

A Not that I heard of, no.

Q You all worked in a small friendly group, didn't you?

A Yes, sir.

Q At the Carter Cab Service?

A Right.

Q The period of your acquaintanceship went over years?

A Yes.

Q From I think 1969 to 19 --

A Through 1971.

Q Did you ever have coffee with him?

A Maybe once or twice.

Q Friendly occasions?

A They were not hostile.

Q They were more or less social, were they not?

A Most of my business with Mr. Dinino was on a business level. I did not hang around Carter Cab after 6:00 o'clock. I was generally running to the track. So if you mean did I socialize with him constantly, no, I did not.

Q No, I didn't imply that. But the times you had coffee was for a social reason?

A More or less.

Q You didn't run to the authorities at any time and tell any law enforcement agent that a fellow named John Dinino is taking advantage of you?

A No.

Q Then there came a time that you described where you just couldn't make the payments?

A Yes, sir.

Q And at that time you sought relief from the scheduled payments that you were to make, is that correct?

A True, sir.

Q And you got the relief that you asked for?

A That's right.

Q No threats were made?

A No.

Q You asked them for that, is that correct?

A That's right.

Q You were seeking a favor from them?

A You might call it a favor.

THE COURT: We have been through this. Can we conclude this, please?

MR. BLOUSTEIN: Yes, I am just about ready to, your Honor.

Q Did you know that Mr. Dinino had a business of running a service station?

A I heard of it, yes, sir.

Q The men and boys around Carter Cab knew that? That was common knowledge, was it not?

A Yes, sir.

Q Did you know anybody who took their cars there to be fixed?

A A few of them did, yes.

Q It was, as far as you know, a regular service station?

A I was up there once, yes.

Q And you saw it?

A Yes.

Q Did you see Mr. Dinino there?

A Yes, sir.

Q What was his activity there when you saw him?

A He was taking charge of the station.

Q Pumping gas?

A Yes.

Q And general management of the service station?

A That's right, sir.

Q Was he dressed in a business suit?

A No.

Q How was he dressed?

A In coveralls, greasy.

Q He looked like any other man around the service station, is that correct?

A True. Yes, sir.

MR. BLOUSTEIN: I have nothing further, your Honor.

CROSS EXAMINATION

BY MR. PELUSO:

Q Mr. Ronson, on September 7, 1973 somewhere in Manhattan you spoke with two agents, an agent Tompkins and an agent Potkonjak?

A One name I don't recognize. The other name I do.

Q Do you recall that?

A Officer Potkonjak I remember.

Q Do you recall how long that conversation took or that discussion took?

A About a half hour.

Q Did you discuss this case?

A Did I discuss this case?

Q Did you discuss some of the principals in this case, Mr. Dinino and Mr. DeVito?

A They discussed a fellow by the name of Norman Ralsky.

Q Were there any questions put to you about Mr. Dinino or Mr. DeVito on that occasion?

A Just if I knew them.

Q One or both of the agents was making notes as you were answering?

A I can't recall to the best of my recollection. I was scared out of my pants.

Q On October 15, 1973 you testified before the grand jury?

A Yes, sir.

Q You were asked questions by Assistant U.S. Attorney Padgett?

A Yes, sir.

Q Do you remember how long that session took?

A Approximately a half hour.

Q You were asked questions about Mr. Dinino and Mr. DeVito and your transactions with them?

A Yes, I do recall, yes.

Q Did you speak with Mr. Padgett before going into the grand jury?

A Yes.

Q How long did that conversation take ?

A You mean in that same span of time, during that same day?

Q Yes.

A About ten minutes.

Q On October 24, 1973 you had a conversation in New York with Agent Raleigh?

A Yes.

Q That conversation concerned Mr. Dinino and a Mr. DeVito?

A I believe it did.

Q And your transactions with them?

A Right.

Q How long did that conversation take?

A About forty-five minutes, an hour.

Q On May 2, 1974 at 3155 Sedgwick Avenue in the Bronx, May 1st, I'm sorry, 1974, you had a conversation with an Agent O'Hara?

A Yes, I did.

Q Do you remember how long that conversation lasted?

A About ten minutes.

Q On each of these occasions when you met with one of the agents, were you asked by the agents to tell them about your transactions with Mr. Dinino and Mr. DeVito?

A Not on all occasions, no, sir.

Q Were there some occasions where you were not talking about Mr. Dinino and Mr. DeVito on the dates that I mentioned?

A The last date that you mentioned, I was just asked to identify Mr. DeVito.

Q In other words, the agents brought a picture to you?

A That's right.

Q Did you on any one of these occasions tell any of the agents in question what you told this jury today about Mr. Dinino calling your house and speaking to your wife and you telling Mr. Dinino that he should not call your wife?

A Did I tell the agents this?

Q Yes.

A I might have. I don't recall right now.

Q If I were to show you the notes of the agents who conversed with you on the respective dates --

THE COURT: I think the simplest way to handle this, if they are not of the interview and they do not contain any reference to the situation with the wife, they do not. I am sure the government would concede it.

MR. ABZUG: I will freely stipulate to that fact, your Honor.

MR. PELUSO: The government will concede that none of these notes stipulate --

MR. ABZUG: Absolutely.

THE COURT: That is fine. That is in the record.

Q When you testified before the grand jury --

THE COURT: Again, if the grand jury testimony does not have something, it does not have it.

MR. ABZUG: I will stipulate that the grand jury testimony doesn't have it and that the first time I heard this incident --

THE COURT: We do not have to have the first time you heard it. The grand jury testimony does not have it in. That is conceded.

Q With regard to your meetings and conversations with Mr. DeVito, I believe you said there were at least

two occasions when you had some difficulty meeting payments and you asked Mr. DeVito if he could do something about reducing the payments, is that right?

A Yes.

Q Did Mr. DeVito on any of those two occasions threaten you?

A No, sir.

Q Did he use any violence against you?

A No, he did not.

Q Did he attempt in any manner to extort the money from you?

A No.

Q Mr. DeVito said "I will see what I can do about it"?

A That's right.

Q He in fact did do something about it to accommodate you?

A He did.

Q Did Mr. DeVito on any occasion either threaten you or use violence against you?

A No, he never did.

Q Or attempt to extort money from you?

A No, sir.

MR. PELUSO: I have no further questions.

THE COURT: Anything from the government?

MR. ABZUG: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. ABZUG:

Q Mr. Ronson, why was it that you didn't tell any of the agents of the Federal Bureau of Investigation and the grand jury about Mr. Dinino threatening to call your wife if you didn't pay --

MR. WALLACH: Objection, your Honor.

THE COURT: Overruled.

A Would you repeat the question?

Q My question is, it is conceded by all parties here, sir, that you did not tell the FBI at any time that Mr. Dinino threatened to call your house and speak to your wife unless you continued paying him.

My question to you, sir, is why didn't you tell the FBI that? Why didn't you tell the grand jury that?

A I wasn't asked about anything like that. It didn't enter my mind. I probably forgot about it.

Q Isn't it a fact, sir, that you were embarrassed?

MR. PELUSO: I object to the District Attorney testifying.

THE COURT: It is a question.

MR. PELUSO: It happens to be a leading question, Judge.

THE COURT: I will permit that. The only thing I want to caution the jury about, people have to ask questions, and sometimes they have to ask about a state of facts. That is not testimony, it is not evidence.

The only evidence is the testimony from the witness stand. Sometimes the answer is yes, sometimes it is no, sometimes it is something different. You have to evaluate the testimony from the witness stand and that is your responsibility.

But please be very careful that you do not give any evidence weight to the question as a question.

Q Isn't it a fact, sir, that the reason that you didn't tell the FBI and the grand jury was because you were embarrassed and wanted to keep your wife out of it?

A I didn't want her involved in it.

MR. ABZUG: I have no further questions.

THE COURT: You may step down, Mr. Ronson.

MR. PELUSO: May I have --

THE COURT: Certainly.

RECROSS EXAMINATION

BY MR. PELUSO:

Q Mr. Ronson, when you testified before the grand

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jury, were you aware of the fact that those proceedings were secret?

A Yes, sir.

Q And you were aware of the fact that there would be no way that your wife could know what you told the grand jury?

A Unless I told her.

Q That's right.

MR. PELUSO: I have no further questions.

THE COURT: You may step down.

(Witness excused)

MR. ABZUG: The government rests, your Honor.

THE COURT: We will take a brief recess. If the jury would retire, I will speak to counsel for a moment.

(Jury not present)

THE COURT: We have had earlier discussions at least yesterday at which time I questioned the government about the sufficiency of its case to go to the jury, and of course I think the last question -- the last discussion of that was at the very end of the day yesterday before we had heard this morning's evidence and the evidence this afternoon.

As long as I took the initiative of raising

lhjw 143

the point, I guess I am taking the initiative of raising the point now.

I assume that there will be motions, and I want to tell you that in the meantime I have gone over my notes quite carefully and I think that the government is correct that they have enough of a case to go to the jury.

I think that some of the evidence that came in this morning considerably improved the government's case and indeed in going over my notes of even yesterday's testimony, it seems that the government is correct, that viewing the evidence as a whole, this is a jury question and not something that the Court can dismiss.

I just want to lead off with that, since I kind of took the lead yesterday. Anyway, I assume that there will be motions now for the record, and I am certainly happy to hear them.

MR. BLOUSTEIN: Yes. If your Honor please, on behalf of the defendant John Dinino, I respectfully move for the indictment to be dismissed on the grounds that the government has failed to make out a prima facie case.

THE COURT: Is there a motion --

MR. WALLACH: We move under Rule 29 for a

lhjw 144

a judgment of acquittal, your Honor. Most of the evidence over here -- firstly, I'd like to respectfully draw your Honor's attention to a rule in federal practice that criminal statutes to be strictly interpreted --

THE COURT: I have given this matter really quite intense consideration, and I do not want to cut you off unduly, but I think we would spend our time best without having a fully developed argument. I do not see that it will help.

We have gone over the issues heretofore. I want to say this: The count that I am now most in doubt about is Count 3 as to Ronson.

I think on every other substantive count there is enough to go to the jury on the issue of express or implied threats of the use of violence. I would submit each of those counts, namely, 2, 5, 6 and 7, to the jury on that.

I will say now that I will not charge on this statutory language, other criminal means. It has no meaning in this case and it is not defined, there is no suggested definition in the government's proposed charge, and I do not really think that is what the government contends.

I do not think we are dealing with some vague,undefined other criminal means

But we come to Count 3 about Ronson, and I do not see anything there involving an express or implied threat of violence or harm to the person, which is what we would talk about in the other counts.

I think what you are going on with Ronson is the express or implied threat of harm to reputation.

MR. ABZUG: That is correct, your Honor.

THE COURT: In your memo which you gave me, you did not cite any cases, and I suppose you do not have them.

This question of whether there could be a threat to reputation by virtue of what you would argue to be a threat to keep calling the wife, by the time that was done, the wife had been told by Mr. Ronson about his relationship with Dinino.

So what is the significance of the implication that if the jury accepts it, the implication or expression that Dinino would keep calling or might keep calling the wife? Does reputation mean what your wife thinks of you? All thosequestions, I think that is a little thin.

MR. ABZUG: May I just make the following argument and then I will submit it naturally to your Honor's discretion.

The government's argument with respect to

lhjw 146

Count 3 against Sherman Ronson would be as follows:

Leaving aside what Sherman Ronson's fear of these calls might be, because I submitted under statute that's irrelevant, the government doesn't have to prove that the witness, that Sherman Ronson was actually afraid that Dinino's calls might take place. Fine. We are agreed on that point.

The government's position would be what was John Dinino's intent at the time that he told Sherman Ronson that "Youkeep paying me or I am going to call your wife."

Here is what transpired before that, your Honor. We had one phone call to Mr. Ronson's wife. Following that call Mr. Ronson was disturbed, talked to John Dinino, said, "Please don't do it again, I will try to keep up my payments."

Dinino disregards it, calls again, and Mr. Ronson at that point explained to him that he didn't want his wife to know that he was borrowing money. He missed another payment, John Dinino calls again, another conversation with Sherman Ronson, and at this time the government would submit that the conversation that transpired at the second conversation with John Dinino clearly shows that it was John Dinino's intent that Sherman Ronson should

lhjw 147

repay the vig payments to him under the threat of calling his wife.

In John Dinino's mind I think there is no evidence that John Dinino knew that Sherman Ronson's wife had --

THE COURT: Is what your wife thinks about you harm to reputation within the meaning of the statute?

MR. ABZUG: I would argue, sir -- what your wife thinks of you, your Honor, I think is the most important thing in the world. If reputation means anything, it must be what your wife thinks of you.

Surely, your Honor. I mean, we are not talking about a third party here, some anonymous stranger, what her opinion of you is. We are talking about a wife. This is the most important person in the world to Mr. Ronson.

If the statute -- if reputation means anything under the statute, surely it must mean that, your Honor.

MR. WALLACH: Your Honor, I don't understand. Reputation is usually what a group of people think. The relevant basis would be the community, the people you work with.

I don't undersatnd how you could have a reputation with your wife. Reputation doesn't coincide with character.

lhjw 148

THE COURT: Isn't there a distinction between reputation and opinion? I guess we can get out a dictionary.

In the realm of character evidence, there is a distinction in that realm. People are not allowed to get on the stand usually -- well, whether they are or are not, there are two types of inquiries which are sometimes attempted, and I guess one is what is your opinion of the person and what is the person's reputation.

Reputation has a kind of broader and different meaning than one person's opinion. Whether the statute really means informing a wife of the facts about the loan so that she will know about the loan and whether the statute, speaking of reputation, would encompass that kind of thing versus something a little broader, I think is a question -- I would not think so.

MR. ABZUG: May I just make the following argument, and then I will submit it to your Honor.

Your Honor, I did try to find cases on this point last night and I frankly was unable to. This is the way I would look at it.

I would ask myself what is the purpose of Section 894. The purpose is to prevent men like Mr. Dinino sitting over here and Mr. DeVito from encouraging repayment

of loans, of extensions of credit, by threats. That's the broad purpose.

We don't want money being repaid under coercion. That's the purpose of the statute, I would submit, your Honor.

To adopt your Honor's tentative narrow construction I think would permit the following thing to occur, which I don't think Congress had in mind. What it would permit would be a man like -- men like the defendants from suggesting to somebody near and dear to their victim, perhaps the wife, that they were going to disclose something that they didn't -- that the victim didn't want the wife to know about. Something terrible.

THE COURT: In other words, what you are saying is the right way to collect a debt is to go to the debtor, and if you say or indicate you are going to call his wife, it is an abnormal means and --

MR. ABZUG: It can be exceedingly coercive. That's the point, your Honor. The coercion in calling -- in threatening to call somebody's wife is in certain cases, and in Mr. Ronson's case, I would suggest, just as virulent and just as strong and should be pointed under the rationale of the statute as somebody making a threat that you are going to go sleep with the fishes or whatever the threat

lhjw 150

might be.

In this case --

THE COURT: I think we all have got to agree that this is something that none of us probably reserved to the bitter end and it is probably somewhat of an open question because it is somewhat of a new law.

The thing that persuades me, and again I am ruling in favor of the government, I think the thing that persuades me is the idea that the statute was meant in this setting to prevent the use of threats, and when someone says or indicates they will call the wife as long as payment isn't made or they may call the wife, whatever was exactly said, let's see what it was, the witness has said, "If payment is made on time I won't call your house."

There was not any legitimate reason to call the house except to exert coercion, because the wife was not coming up with the money, she was not a party to the agreement.

So I will rule in favor of the government.

MR. WALLACH: Your Honor, may I be heard a second? I don't mean to interrupt, but frankly the defense, I feel just for the record, Judge, because if there is --

THE COURT: You have your record.

MR. WALLACH: I would like to draw your Honor's

lhjw 151

attention and also the United States Attorney's attention to the fact that Section 891, Title 18, Subdivision 7, has a definition of terms.

May I read it?

"An extortionate means is any means which involves the use or an express or implicit threat of use of violence or other criminal means to cause harm to the person, reputation or property of any person."

Under the prosecutor's definition --

THE COURT: You are reading 891.7?

MR. WALLACH: Definitions.

THE COURT: You are reading 891.7, are you not?

MR. WALLACH: Yes.

THE COURT: That is what we are talking about.

MR. WALLACH: According to the government's argument, if I am told by my bank or banks if I do not make my loans, if I do not make the payments on my loans in time, they will notify every credit agency in the United States, they could be indicted under this statute.

It uses the word criminal. What is wrong with a person calling up a person's wife and saying, "Your husband owes me money. Will you tell him to pay

lhjw 152

it?"

THE COURT: He had asked that she not be told.

MR. WALLACH: That doesn't make it illegal. Where is the criminality --

THE COURT: I think the thing is -- if this were the only count in the indictment, it would be one thing. But what you have here when you put all the evidence together, you have evidence about a slapping and certain threats of physical harm, and one fellow, Louis, who had come in on behalf of these defendants, had a pistol which he displayed.

So you have to realize, it seems to me, we have an overall picture. Of course Count 3 is a separate count and the jury may not convict on that count, but I am going to leave to the jury at least initially.

Does the defense have a case? Are you going to put on a case?

MR. WALLACH: Judge, I don't want to interrupt, but I have been criticized in the Court of Appeals because it wasn't raised at the trial record. I have a duty to them, not to anyone else, frankly, except your Honor, I would just like to make a record because I don't ever want to be accused or I don't want counsel to be accused that they didn't bring this out to give your Honor

an opportunity to explore it.

I'd like to state now, your Honor, that the statute as construed by the government and as applied to the facts of this case is void for vagueness, is based on the subjectivism of witnesses.

In regard to Louis who came with a gun, I don't know who Louis is. There hasn't been any connection between Louis and anybody in this court --

THE COURT: Yes, there has been. You look at the record.

MR. WALLACH: I respectfully submit to your Honor that in this case the government has shown no evidence, speculation for the jury, and if the Court allows the government to do that and is the basis for your Honor denying the motion under Rule 29, the statute as construed under the facts of this case is void for vagueness.

There is also the question of requests to charge.

THE COURT: Let's just take things in order.

Does the defendant Dinino wish to put on evidence?

MR. BLOUSTEIN: No.

THE COURT: Does the defendant DeVito wish to

put on evidence?

MR. PELUSO: Yes.

THE COURT: What witnesses will you put on?

MR. PELUSO: At this time we have two witnesses, Judge. Two character witnesses.

THE COURT: After that we can discuss the charge.

MR. WALLACH: Can we have a recess, Judge?

THE COURT: Yes. Lest the record is unclear, all motions to dismiss are denied.

MR. BLOUSTEIN: Your Honor, were you planning to have anything further --

THE COURT: I want summations this afternoon. Absolutely.

(Recess)

Pad #3

LHjw 155

(In open court - jury present)

THE COURT: The government has rested. The defendant Dinino will put on no evidence, and I remind you that he is not required to.

Dinino rests, is that right?

MR. BLOUSTEIN: That is correct, your Honor.

THE COURT: The defendant DeVito as I understand has witnesses?

MR. PELUSO: Yes, Judge.

At this time, if your Honor please, Mr. DeVito calls Arthur Attanasio.

A R T H U R A T T A N A S I O , called as a witness by defendant DeVito, being first duly sworn, testified as follows:

DIRECT EXAMINATION

XXX

BY MR. PELUSO:

Q Good afternoon, Mr. Attanasio.

Where do you live, sir?

A In Tallman, New York.

Q Do you know the defendant, Mr. DeVito?

A Yes.

Q How long have you known him?

A Approximately nine to ten years.

Q Do you know him socially or in business?

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lhjw 169

take a stretch. I may do it on my own initiative. We will adjourn after the summations until 10:00 o'clock tomorrow and I will deliver my charge promptly at 10:00, which hopefully will take about an hour, and then -- maybe a little less. Then you will start your deliverations after that. So that is our present schedule.

All right, Mr. Abzug. The order of the summations is that the government has the right to lead off, to make its principal summations first. The defense lawyers then have a right to sum up, and then the government has a right to make a very brief rebuttal, if it deems that necessary.

Okay.

MR. ABZUG: May it please the Court, Madam Forelady, ladies and gentlemen of the jury.

As I mentioned to you in my opening, this case is about two things essentially. There are two questions that you are going to have to decide when you go into deliberations. What are the two questions?

The first question is whether John Dinino made extensions of credit to seven government witnesses in this case. Did John Dinino make extensions of credit to Samuel Herskowitz, did he make extensions of credit to Jackson, Levine, Ronson, Cassese, Charles Penker, Sidney

lhjw 170

Shalkin.

The second question you are going to have to decide is if he made extensions of credit to those people did John Dinino and Vinny DeVito use implicit or explicit threats to harm those seven persons person or reputations in an effort to collect those extensions of credit.

So you have is there an extension of credit and is there a threat in the course of trying to collect those extensions of credit.

Before I begin to discuss the government's case, let's just decide between ourselves what isn't in controversy so we can focus on the important thing.

What I would submit to you that is not in controversy is that there is no controversy that each witness received an extension of credit from Mr. Dinino. Each witness testified that they received a sum of money or that they were indebted to the defendant because of a gambling debt. There is no controversy on that, ladies and gentlemen.

So with respect to the first question, I would submit that's not at issue. There is no question that both Vincent DeVito and John Dinino had an agreement that Vincent DeVito would collect for John Dinino when John Dinino wasn't there. There was an agreement. There is no

lhjw 171

question of that.

Each witness testified, each of them testified that Vincent DeVito collected from them when John Dinino wasn't there for John Dinino's loans. Each witness testified -- we had many witnesses testify that John Dinino intorduced Mr. DeVito as his partner. We had many witnesses testify that John Dinino told them "When I am not here Vinny or Mr. DeVito is going to collect."

We had some witnesses testify that John Dinino said "Vinny is going to be taking over for me now."

Finally we had Mr. DeVito himself say, when one of the witnesses said "Where is John," Mr. DeVito responded "Well, I am going to be taking over for John now."

So there is just an absolute -- a vast amount of evidence for you to find that there was an agreement between these two men to collect repayments on the loans that John Dinino made to government witnesses.

So what is the controversy? What are you really going to have to decide in that jury room? Because any discussions of whether there was an extension of credit or whether there was an agreement, that I would submit to you is just a smokescreen. It is a smokescreen that would be raised by the defense to distract --

lhjw 172

MR. WALLACH: Objection, your Honor. They don't know what we are going to raise.

MR. ABZUG: It is argument, your Honor.

MR.WALLACH: It is not an argument directed against what we said, Judge.

THE COURT: The jury knows that. Please, let him proceed. The jury can make its judgment between the two of you or the three of you.

Go ahead, Mr. Abzug.

MR. WALLACH: I apologize to the Court, but I am constrained to make these objections, Judge.

THE COURT: Please. We will try to avoid these interruptions of the summation.

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes. I thought you said that it wasn't in controversy, so I do not know why we have to raise it anyway.

MR. ABZUG: Not in controversy in my mind. If it is raised, I would submit to you that it is a smoke-screen to distract your attention from the conduct of the defendants. Any discussion about a loan or whether there was an agreement between these men, that is irrelevant and is just a smokescreen.

The question is whether the defendants agreed

lhjw 173

to use extortionate means to collect these debts. That's the question. That is what you are going to have to decide. It is whether the acts and words of the defendants instilled a fear in the persons that they were collecting from or whether it was reasonably calculated to do so in light of the surrounding circumstances. That's what you have to decide.

It is not necessary that the witnesses testified they were afraid, because some of the witnesses testified they weren't afraid in this case. And I think you know why.

MR. BLOUSTEIN: Objection.

MR. WALLACH: Objection. Move for a mistrial, Judge.

THE COURT: Motion denied, and I appreciate if you both remain seated unless there is an absolutely imperative clear ground for objection. You have a right to make your summations uninterrupted, and I will certainly put Mr. Abzug down if he interrupts you, and the same goes for Mr. Abzug. He has a right to proceed. He has not said anything improper so far to my mind.

It is up to the jury to weigh what he says, and I will tell the jury that it is the evidence that matters and not what the counsel say, that counsels'

lhjw 174

statements are simply their arguments of what has been proved or has not been proved. Certainly both sides will have the opportunity to argue their view as to the credibility of the witnesses, and that is an issue here.

Please let's let the thing go along.

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes.

MR. ABZUG: What did the witnesses say? What the witness said in that box, Sam Herskowitz, what he said is --

THE COURT: I will say this. It is not the credibility of the attorneys that is at stake. The attorneys, all they have a right to do is to argue to you what they believe has been proved or has not been proved. They have a right to argue to you what they contend the facts are about the credibility of the witnesses.

But it is the credibility of the witnesses that is at issue and of course not the credibility of the lawyers, what you think of the lawyers. These lawyers will befocusing on the evidence. That is what they are going to do and that is proper.

Go ahead.

MR. ABZUG: The evidence from Mr. Herskowitz was when he sat on that witness stand, was that he was

lhjw 175

afraid today of Mr. Dinino as well as the time when Mr. Dinino collected the repayment of the funds. That was his testimony. In sum, ladies and gentlemen, it is going to be a question of the defendants' intent. What did they mean when they said certain things and did certain acts.

You have to see their intent. To do that you are just going to have to use your common sense, because nobody can have a microscope, it is not some kind of scientific instrument where we can focus in on somebody's head and say, "Oh, you are thinking X and Y." It is impossible to do that.

But what you can do, that is use your common sense, look at the surrounding circumstances, think of the evidence and say what did the defendant mean? What did the defendant mean when he said that? What did the defendant mean when he acted in a certain way? That's your function, that's what you are going to have to do.

Before I begin a review of the government's case, I just want to remark on a few things that were stated on defendants' cross examination, because I really think that that highlights how strong the government's case is in this case, because I submit to you it is a smokescreen. I will show you why.

Let me just bring to your attention, I am sure

lhjw 176

you recall some of the things that were said, some of the facts taken by the defense on their cross examination.

First, we have the contention that the government witnesses gambled, they are gamblers. All right, we freely concede that. We told you that on our opening. These men, some of them are compulsive gamblers. Sherman Ronson is a compulsive gambler. Philip Jackson is a compulsive gambler. He said so. Sherman Ronson has now pulled himself out through Gamblers Anonymous. So what? What's the point? Have the defense attorney explain to you what the point of that is. There is no point. It is just an effort to just throw sand in your eyes.

There is no reason why you should disbelieve these people because they are gamblers. It is just a common tactic, they are turning the guns around, they are trying to put the prosecution witnesses on trial here. They are not on trial here. They haven't been indicted.

The people that are on trial here are the defendant John Dinino and Mr. DeVito. That's who is on trial here. Not them for compulsive gambling. Just because they are compulsive gamblers doesn't mean that they somehow are enhanced liars.

You have the right to consider their aspect

lhjw 177

as they were sitting there, what they looked like. Did they look like they enjoyed being here, these men? Did Ronald look white as a sheet, did he look like he enjoyed being here, or did Sherman Ronson, you couldn't hear the guy he was so scared, did he enjoy being here? No, they didn't enjoy it.

There is no motive for them to lie. They are telling the truth, that's why. So, we go on.

We come to the second contention. The second contention was that they went to other shylarks before they went to John Dinino. What does that prove? What does that mean?

It means the government will freely concede that John Dinino did not create the evil system of loan-sharking. We will concede that. But what we suggest to you is that he certainly took advantage of it. He certainly did.

Is it consistent with Ronald Levine's testimony that he wasn't afraid of the defendant that Ronald Levine went to another shylark to borrow money to pay the defendant. Is that consistent with his testimony to you in this court that he is such a nice guy, such a nice guy he has to go to another shylark to pay him? Do you believe that? Is that reasonable? No, it is not reasonable.

lhjw 178

There has been some mention that the government harassed some of the government witnesses in an effort to coerce their testimony or twist their arms. Well, let me put it this way.

You have heard Philip Cassese's grand jury testimony. Did it sound to you in that grand jury testimony as if the government was harassing Philip Jackson or Philip Jackson was harassing the government?

Not only that, it is kind of a strange contention for the defense to make that the government is harassing the government witnesses. We are not harassing them, they are harassing them. This is what the trial is about.

It is about the acts of the defendants and the government witnesses. To say the government is harassing its own witnesses is like turning the world on its end. It just doesn't make sense. Besides which, you have again the grand jury testimony of Philip Cassese read to you. Did it sound like the government was harassing.

Philip Cassese was protected. The grand jury foreman was there, everything was on the record for you to consider. Unfortunately there was no record made of what the defendant said and what Mr. DeVito said and did to the government witnesses in this case. All we have is

lhjw 179

some of the admissions they were willing to make in the grand jury and some of the testimony they were willing to make on the stand.

There has been some suggestion that the defendant worked for aliving, that he worked hard for a living, he had the constant repetition of the greasy overalls up in Ramapo. The man is a hard worker. He did work hard. He worked up in Ramapo until around 7:00 o'clock when he bused down to the Bronx to make his collections, and so did Vinny DeVito. That's how hard they were working. They were working so hard they were willing to come down fifteen miles from Ramapo to make sure they got their vig, their payments.

We will concede they worked hard. They sure did.

Finally, there is a suggestion that the threats in this case were not meaningful. In other words, we have, and I will go over this in a little more detail later, but we have testimony from Sid Shalkin that John Dinino threatened to punch him in the nose. We have testimony from Phil Cassese in the grand jury that Vincent DeVito slapped him and we have Charles Penker reciting the same incident. We have testimony from Sam Herskowitz that Mr. DeVito grabbed him and harassed him when he said

lhjw 180

he couldn't pay. He was a sick man.

All these things the defense suggests in their cross examination are -- mean something other than they would appear to a rational person.

Let me ask you this: When John Dinino threatened to punch Sid Shalkin in the nose, was that in code? Were they talking in some strange language? Again, just use your common sense. Were they kidding around? What was the guy's testimony? What was this man's testimony?

The man's testimony was not that John Dinino threatened to punch him in the nose as a good natured joke. The man's testimony was that he was sick, he was a diabetic, he couldn't go to work for eight weeks, he couldn't make his payments to John Dinino. John Dinino couldn't squeeze the $10 vig out of him. He came up to visit friends, John Dinino runs up to him and says "Where's my money?" The guy says, " I don't have it. I am sick. I can't -- I just don't have the money."

John Dinino says, "You are going to get punched in the nose." Does that sound like a joke to you? Does it sound like a good friendly discussion between these two men?

The same thing is true with Ronald Levine's testimony about how Mr. DeVito is a perfect gentleman and

lhjw 181

Mr. DeVito is a perfect gentleman. Does it sound like it when Ronald Levine owes Mr. Dinino $500 and Mr. Dinino says, "I am going to send the boys downtown, I am going to send the boys down to straighten you out," is that consistent with Mr. Levine's testimony here today in this trial in front of the defendants or is it consistent with what he said in the grand jury? I would suggest to you his grand jury testimony is the testimony to believe.

What is the evidence in this case? What is the government's evidence? Let me briefly go over it with Samuel Herskowitz.

Again, there is no controversy that Samuel Herskowitz received a loan, he received many of them from the defendant, all at usurious interest rates. He was paying usurious interest rates to John Dinino. He pays, he pays, he pays, he never misses a payment. This is the important thing to keep in mind I would suggest to you, because these guys don't -- there are no problems here until these guys miss payments, and then the crunch comes.

All right, he pays John Dinino. In fact, he leaves Carter Cab and he goes down to work in Manhattan, and his testimony was every Friday from Broadway he would ride fifteen miles up to Carter Cab to make sure that he

lhjw 182

paid the defendant money, to make sure that he got his money.

Then what happens? Mr. Herskowitz can't make the payments and Mr. Dinino says, "You got to pay vig." He is not willing to let him go. He wants his money.

All right. So he starts paying vig. He makes eight $10 payments. He doesn't take anything off the principal. Then Mr. Herskowitz gets sick. He has a diabetic attack, he goes into insulin shock. You saw him up there. Does he look like a strong man to you? He looks like a wreck. Look at the defendant here. He runs into the defendant and the defendant grabbed him by the arm and said "Where is my money?"

Mr. Herskowitz' first response is, "John, I don't have it. I am not working, I don't have the money. Besides, I paid you enough."

Then what happens? You heard his testimony on cross. It was brought out on cross. "How long did the argument last?" It was a violent argument for ten or fifteen minutes. What happened at the end? Was there an agreement that Mr. Herskowitz had paid enough and that he was a sick man and that he would just let him go? That wasn't the agreement.

The agreement was, "Mr. Herskowitz, you are

lhjw 183

going to pay as soon as you go back to work." What did the defendant mean when he grabbed him by the arm and said, "You got to pay"? Was it in code? Was he talking in Latin? Or was he talking in English? What did he intend when he said that? Did he put Mr. Herskowitz in actual fear by those words? Yes, he did.

Mr. Herskowitz testified that at the time that statement was made, he was afraid. He agreed to make payments to John Dinino, even though he was a sick man. That's what this case is about.

Were those words reasonably calculated to instill fear in that witness? Sure it was. John Dinino wasn't joking around. He wanted his money.

Vinny DeVito was taking advantage of the situation. He was an integral part of this system. Vinny DeVito was making collections for Mr. Herskowitz.

Count 2, this is Ronald Levine. Ronald Levine got on and testified that he had no problems with Mr. Dinino, he had no problems until he had his gambling loss and he couldn't come up with the money.

See, this is my point on opening. You don't kill the goose that lays the golden egg. As long as these guys are making payments, the defendants are willing to squeeze blood out of a rock.

lhjw 184

Go over the testimony. Go over it amongst you in deliberations. I think you will agree that whenever -- in any of the witnesses, whenever there is a disagreement about payment or they can't come up with the money, that's when the threats are made. That's what we are talking about.

In Ronald Levine's case he couldn't come up with the money, and what happened? "John, I can't come up with the money, I can't come up with all this money because of my gambling loss."

What did John say? Was this a friendly situation? Did he say, "No, we will just let it ride"? No, he didn't. He didn't say that.

He said, "You are going to pay the money or I am going to send some boys to straighten you out."

And don't forget, Ronald Levine knew because John Dinino had given him the money to call them that John Dinino was also booking, and a threat like that, that you are going to send the boys around, that could only mean one thing. He wasn't kidding around.

Was he joking? What did he mean by that? This is what you always have to ask yourselves. What did he mean when he said the words. Was he joking or serious? Was he trying to encourage Mr. Levine to

lhjw 185

repay the money? Sure he was. He wasn't kidding around. This is a threat. A threat to get Mr. Levine to come up with the money. He sure did, because what did Mr. Levine do when John came up with that threat? Remember what his testimony was?

His testimony was he went to another shylark, Norman Ralsky, and said, "Norman, give me $200 because I got to pay John off," John who he was too afraid to confront today, sitting here, I can't emphasize enough how he looked. He looked like he was about to pass out, he was so afraid.

That's not consistent with an explanation of friendship for a man to go to one shylark to pay another. He was afraid, ladies and gentlemen. He was afraid, and the defendant meant him to be afraid.

Again, Vinny DeVito took advantage of this system. There is no evidence, there is not any direct evidence in Counts 1 or 2 concerning Ronald Levine and Samuel Herskowitz that Vinny DeVito actually threatened, but he didn't have to, because he was taking advantage of the system that Mr. Dinino had constructed. He was making payments, he knew what was going on.

Do you know why he said -- do you know what the evidence is that he knew what was going on? When were

lhjw 186

the actual incidents of violence perpetrated in this case? Who brought in the muscle, really?

The two times the muscle was brought in, who brought it in in this instance? It was Vinny DeVito. He had the connections, because it was him that brought Louis around with the gun, and it was him that slapped Philip Cassese when Philip Cassese wouldn't pay.

You think he is an unwitting dupe of John Dinino, a guy that just goes around collecting money from seven, eight different people at Carter Cab, goes all the way up from his carting factory in wherever the heck it is, the Bronx, all the way down to Carter Cab just out of friendship for the defendant and doesn't know what's going on?

That I submit to you is just a ludicrous explanation. That's a defense I submit to you that is absolutely unbelievable.

He knew. He knew. Of course he knew because whenever the muscle was needed, he was there. He would come there.

You can also consider when you are talking about Ronald Levine's conception of Mr. DeVito the fact that he witnessed Mr. Dinino threaten his friend Philip Jackson. There was some controversy, I really don't know

lhjw 187

what the point was, whether it was a kick or a bust, I mean -- in the balls. I mean, it is ridiculous. Whatever it was, it was certainly a threat and it made Mr.Levine very uneasy.

In fact, he said in the grand jury it made him frightened. You know why it made him frightened? Because he said, would you, Mr. Dinino is threatening my friend Philip Jackson over a loan, gee, I owe Mr. Dinino money, that's what could happen to me. He has the boys in the office, the fact that this guy is threatening his friend. He is not paying back this money because he loves this man, he is his best friend. He came back because he is afraid.

You have evidence before you that can justify that conclusion, that compels that conclusion. Let's talk about Sherman Ronson.

Sherman Ronson was our last witness here. We concede that unlike most of the other government witnesses there was no threat of physical harm with Sherman Ronson. The statute provides and the Court will instruct you that threats can be made against the person or the reputation of a witness. In other words, what are we talking about when we are talking about this statute?

We are talking about permitting men like the

lhjw 188

defendants from going to people like the witnesses and coercing, extorting money from them, twisting it out of them. That's what we are talking about.

Congress recognized when it passed this statute that there is more than one way to skin a cat. What to one person might be a very fearful threat, for example, threatening to put a gun there and say for two cents I will blow your brains out might to another person who is very brave or who knows the gun is unloaded, it is not a threat.

In Sherman Ronson's case, the threat was humiliating him before his wife. In those circumstances, the circumstances of Sherman Ronson, I submit to you, it is a very compelling threat. What is the singlemost important to you in this world? To a married person, it should be either the husband or wife. What do they think of you? That's what is important.

If you have testimony from Mr. Ronson uncontroverted that when he would miss payments John Dinino would call up on the phone, talk to his wife, the first time he did it Sherman Ronson went right back a couple of days later and said, "Look, please don't do that. Don't call my wife. It is upsetting and I will try to make the payments."

lhjw 189

He misses the payments again. What was his testimony? The phone rings again. It is him, John Dinino. What happens after that? He calls the wife, where is Sherman Ronson. He has another conversation with the wife. At this juncture he is forced to admit that he owes the guy money. A great humiliation to himself.

This is the guy who is trying to pull himself up out of the mire through G.A. He goes to the defendant and says, "Listen, please don't do that. I will try not to miss any payments. Don't call my wife any more."

What does the defendant respond? This is the threat. He says, "You are going to keep making those payments or I am going to keep calling your house." He knows the point of pressure. Maybe to Sherman Ronson a threat to physically beat him is something that can be ignored. But the threat to call his wife or harass his family is just as powerful, because Sherman Ronson started making those payments right after that and continued making those payments and the reason was because he wanted to avoid embarrassment and humiliation.

That you can find under the statute is sufficient to convict this defendant. Again, we have Mr. DeVito with respect to this witness, his silent participation.

lhjw 190

He comes, just like the other witnesses, when John isn't there, Mr. DeVito is there, just like clockwork. What they are going to ask you to find is that he was an unknowing dupe, that he didn't know anything about it, that maybe the incident with Philip Cassese and the incident is Louis is somehow unrelated to this whole thing.

This is all a related scheme, ladies and gentlemen, as charged in Count 1 of the conspiracy. These men agreed, this is their thing, this is what they were going to do, to pray upon these seven people.

In Count 4 we talk about Philip Jackson. Philip Jackson was paying John Dinino and Vincent DeVito in 1972. What did he testify happened?

Mr. DeVito came around and introduced him to a guy named Louis, and then Louis came around for payments. Philip Jackson asked him, had this conversation about poor Mr. Shalkin.

He said, " Why do you keep trying to find this guy Shalkin? What's the matter with you? Why do you have to act like this?"

What happened? The guy pulled out a revolver, put it in his stomach and said, "For two cents I will blow your brains out."

Is that a threat? Who sent Louis? DeVito sent

lhjw 191

Louis and it was for payment of John Dinino's loans.

What effect do you think that had on Philip Jackson's state of mind. Do you think he was afraid and continued to pay this defendant out of fear? Oh, yes. He said he was terrified.

Again we ask Mr. Jackson, why did you pay the defendant in this case? Because of that incident, surely.

But there were other things. There was the incident where Mr. Dinino threatened him over Ronny Levine's loan. That certainly was bearing on his mind.

Secondly there was Mr.Dinino's constant reference to his office, checking back. These weren't casual references by the defendant. These were calculated attempts to plant the seed in their mind that they had backing. I will have to check with the office, I will have to check it out. Wait a week.

This is modus operandi. It is not just John Dinino and Vincent DeVito. There are people behind them. That is what they are telling these witnesses and that's the message that Mr. Jackson got. That's the message that Charlie Penker got. Sidney Shalkin, Count 5.

Has the government proved its case there? Yes, I suggest we have. There is no doubt about Mr. Shalkin.

I went over this with you before.

THE COURT: Haven't you gone over each of these individuals?

MR. ABZUG: Not with respect to Mr. Cassese and Mr. Penker, your Honor.

THE COURT: You do not need to repeat.

MR. ABZUG: The point with Mr. Shalkin is clear. Was there an extension of credit? He couldn't pay it. What happened? Did the defendant let it go? He didn't. He threatened him. He threatened to punch him in the nose.

THE COURT: You made this argument before. Why don't you just cover points that you have not made?

MR. ABZUG: I just want to make this one last point.

To a man who is twenty-five years old, punching in the nose to a man like Mr. Dinino one on one maybe isn't such a big deal. But to a man who is sixty years old and is diabetic, and Mr. Dinino knew that, because that was Mr. Shalkin's testimony, is another thing.

With respect to Mr. Penker, we have the same thing. We have an extension of credit and payments are made for about a year and a half, there is no problem. Then Mr. Penker runs into financial difficulty around

Christmasof '72. What does Mr. Dinino do?

Mr. Dinino says, "You got to pay. Don't give me this stuff. You have to pay." He says, "What's my balance? According to my calculations it is $100."

He says, "You have to pay. It is $300 and don't getme pissed off."

What did Mr. Penker do? Did he say to himself as perhaps a person not in fear might do, well, the heck with him, I don't owe him $300, I owe him $100, and that's all he is going to get. What did he do, did he do that? No.

He went to Norman Ralsky, another shylock, borrowed the money to pay this man off. He was in fear. He was worried. That's the effect of the defendant's words. He knew that would be the effect of his words. He knew it.

Do you think he was making a casual, laughing reference? No. That's what you would have to find to acquit this man, that this was somehow said in fun. But it wasn't said in fun. How could it be under these circumstances? That's the only rational explanation.

With respect to Mr. Cassese, and that's the last witness that I will discuss, I would suggest to you that Mr. Cassese's grand jury testimony is surely the

lhj 194

testimony that you should believe today.

Mr. Cassese as a matter of fact under the Court's questioning said that his memory before the grand jury was better than it is today

One thing I might mention as a parenthetical or note as a parenthetical aside.

Mr. Cassese's memory on the defense cross examination improved considerably. I don't know whether you noticed that or not, but I hope that some of you did.

Under my questioning it was like pulling teeth, going back to the grand jury testimony, back and forth, finally I was able to read it all into you so you get a coherent picture of actually what was going on.

The defense questions, he picks it up, "Oh, yes, I know where John worked, he worked up there, I saw him here, this is what he looked like, he had this many employees."

He is afraid. He is afraid to testify before you. Fortunately we have this grand jury testimony and from his grand jury testimony which is in evidence you can find it, and it is just as good evidence as if he said it on the stand, you can find that when Mr. Cassese didn't pay, he had an argument, what happened?

Vinny DeVito slapped him right across the face

and knocked his glasses off. Then what happened? He said, "I will pay." He did pay right after that. His original thought was, "Hey, I already paid this payment to John so I am not going to pay Vinny."

Then what did Mr. DeVito do when that happened? Did he say, "I will check back with John" or "Maybe there is some misunderstanding"? No. He knocked his glasses off, slapped him. That's what happened.

There is no other evidence before you as to what that man's motivation was to pay other than that slap. You recall his grand jury testimony. That's the evidence before you. What he said in that grand jury was when I asked him in that grand jury why did you pay, did you pay because you were slapped, he said, "Oh, I believe it had something to do with that."

I think it did have something to do with that, because it sure didn't have anything to do with anything other than that, and there is no testimony before you that it did. The reason was because of the missed payment. Don't forget this. It is not only Mr. Cassese's testimony, it is Mr. Penker's testimony.

Mr. Penker saw that incident and you have testimony about it. You have corroboration of that incident. Mr. Penker testified that the incident took place. Mr.

lhjw 196

Penker testified that at the time the incident took place Mr. Cassese was unable to pay Mr. DeVito.

In sum, ladies and gentlemen, I submit to you that my statement on opening is still true today. What I said to you in the opening, I think it is -- I think it sums up in the entire case before you.

You had the testimony of all these men over a span of a long period of time, four years. I will freely concede that for as long as these men had money, as long as they were able to pay the defendants, they did, they paid them, and there were no problems. You know the reason why.

But when the going got rough, when things started happening, when these men couldn't pay the defendants back, you had the threats, and that is what this case is about, and that is what you have to find.

I submit to you that the government has proved its case beyond a reasonable doubt. I ask you to find the defendants guilty on all charges.

Thank you for your attention.

THE COURT: Mr. Bloustein?

MR. BLOUSTEIN: If it please your Honor, Mr. Abzug, Mr. Peluso, Mr. Wallach, Madam Forelady, ladies and gentlemen of the jury:

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LHjw 223

UNITED STATES OF AMERICA

v. 75 Cr. 265

JOHN DININO and
VINCENT DE VITO

December 4, 1975
10:15 A.M.

(Trial Resumed)

(In the robing room)

MR. WALLACH: Your Honor, most respectfully, I think that the record should give us another opportunity -- in the case of an adverse result everything has to be raised.

Under the rules as I understand them, a motion under Rule 29 has to be made twice or else it is deemed waived. The case is practically going to the jury, so again at the end of the entire case, all the defense counsel make a motion under Rule 29 for a judgment of acquittal.

THE COURT: You join in that?

MR. BLOUSTEIN: I join in that.

THE COURT: I overnight -- I will deny that motion or those motions.

MR. WALLACH: I have another one, Judge.

Your Honor, at this time I have to move for a mistrial. Firstly, your Honor, and I say this with

lhjw 229

respect, my understanding of the rules are that if an objection is to be made or can be made as to a summation, it has to be made during the summation or else it is deemed waived. That is my understanding.

As your Honor is probably aware, there is a case decided en banc by the Second Circuit a number of years, U.S. against Inviglio, which says these things are not put on the record and a timely objection made, you can't argue about it --

THE COURT: Please, make your motions.

MR. WALLACH: I am now moving for a mistrial because of the district attorney's summation, it is excessive. I would like to point out a few specifics.

Firstly, the district attorney in his opening pilloried the defense --

THE COURT: Please, state your grounds.

MR. WALLACH: That's the grounds.

THE COURT: I do not have time for an oratory.

MR. WALLACH: He went into a supposed defense that was never interposed in this case and commented because his witnesses did not live up to his expectations that somehow or other this was attributable to the defense and that the defense minimized their witnesses. The implica-

lhjw 230

tion is, of course, that the cross examination wasn't to the prosecutor's liking in this case and by the manner of the questions there was some relationship between the defense and the government's witnesses.

Furthermore, your Honor, there is practically an express remark that somehow or other these witnesses were reluctant to testify favorably for the government because of something the defendants did.

There is absolutely no proof in this case that the defendants did anything. The fact that a witness for the prosecution doesn't live up to the prosecutor's hopes--

THE COURT: Let's not have the oratory. We had one witness, Mr. Herskowitz, who expressly stated he was afraid on the stand, and it is certainly -- the essence of what the government was arguing was that there was a reason that these witnesses may not have or did not tell the full truth, because they were afraid, and there was circumstantial evidence of that or direct evidence of that on the stand. It was in my view fair comment.

What else do we have?

MR. WALLACH: It is thoroughly poor taste for the government prosecutor to tal- to the jury and use a word that frankly talking is not English. I just don't

understand what the purpose of using that word was, if not to appeal to sympathy of some jurors.

MR. ABZUG: The word is chutzpah in Yiddish.

THE COURT: I am not granting a mistrial because of that.

MR. WALLACH: I am putting that on the record.

THE COURT: The only thing I want to mention, I did reconsider overnight about Count 3 and I am going to dismiss Count 3 and grant a judgment of acquittal on Count 3.

Just to very, very briefly explain this, I amalyzed the language a little more than I had at the time we were talking yesterday, and 891.7 defines extortionate means as any means which involves -- and I am just going to give the language now that is pertinent to this case. It is as follows:

Any means which involves the use or express or implicit threat of use of violence to cause harm to the person, reputation or property of any person. There are the following steps in that chain of language: Means which involves the use or the threat of use, I guess that is the first step; the second step is of violence; and the third step is to cause harm to the person or reputation,

and so forth.

A call by Mr. Dinino to the wife of Mr. Ronson may arguably have been -- or the threat to make that call may have arguably been the threat to cause harm to reputation. But that isn't the only step in the statute, and the statute provides for -- the statute renders criminal only a threat of violence or other criminal means to cause harm to reputation.

There was no threat of violence to cause harm to reputation, there is nothing in the record about a threat to use other criminal means to cause harm to reputation.

I could not conscientiously charge the jury on that. I could think of no way to sensibly charge the jury on that point and have any fidelity with the statute.

I get your general idea, but I think we still have to stick with the language of the statute, which means that I am going to dismiss Count 3.

I am going to direct, just for the sake of clarity and eliminate confusion, I am going to direct that the references to Ronson be eliminated from the first count, the conspiracy count, and I will instruct the jury, naturally, that they are not to draw any inferences from the dismissal of the third count, that the other

counts -- that there should either be guilty or not guilty verdicts.

MR. ABZUG: Would your Honor wish the government to prepare a redacted copy of the indictment? I would prefer it, your Honor.

THE COURT: You better do that. But you have to get your people on that.

MR. WALLACH: Before the jury is called in, could we have five more minutes? I don't feel well, frankly.

THE COURT: All right, you have five minutes.

MR. BLOUSTEIN: Apropos of something your Honor told us the other day, I questioned my people, Dinino and his family, as to whether or not anybody had spoken to any witness in this case, and I just wanted the record to show that there were absolute denials.

THE COURT: I just wanted to issue a warning because we were in a sensitive spot that night. Thank you very much.

Let's have our five minutes and I will see you.

CHARGE OF THE COURT

Judge Griesa

(In open court - jury present)

THE COURT: Ladies and gentlemen, I am sorry for the late start, but we had a few things to attend to.

I have one announcement to make to you initially, and that is that I am dismissing Count 3 of the indictment. This count refers to Sherman Ronson.

I am also striking from Count 1, which is the conspiracy count, I am striking all references to Sherman Ronson.

The reason is, as you recall, that is the count where the witness testified and the government conceded there was no claim of any violence or threat to violence, and the government's case was based upon the alleged threat to call the wife and the calls to the wife.

Upon a closer look at the statute, I determined and concluded that as a matter of law that proof does not rise to the level required by the statute. So you may disregard -- you will obviously not be involved in any determination on Count 3. That is out of the case.

You will not be involved in any consideration of any conspiracy involving Sherman Ronson.

lhjw 235

The only other thing I wish to tell you is this, that by dismissing one count I am not indicating nor should you infer anything about what your verdict should be on the other counts, on the other issues which remain in the case. They are for your determination and your verdict of guilty or not guilty in the normal way.

Dismissing one count does not indicate that the other counts are proved or disproved. It is completely neutral as to those other counts.

Ladies and gentlemen, you as the jury are about to enter on your final functions in the case. We are performing what is really a sacred obligation of citizenship in sitting on this case. As I indicated at the beginning of the trial, you are under an obligation to perform your function in an attitude of complete fairness, impartiality, without the slightest bias or prejudice, for or against the government, for or against the defendant.

This case is clearly of great importance to the government, since the enforcement of the criminal laws of this country is a matter of high concern to the nation and to the community.

At the same time, the case is equally important to the defendants because of the obvious consequences of conviction for a crime. So what you are performing is a

lhjw 236

very important task for all sides.

I am not saying this to say something that is just a platitude. I am trying to emphasize something which I think you do understand already, that you are obliged to work hard and conscientiously in this case to reach a just determination.

The fact that the United States government is a party to this action entitles it to no greater consideration than the consideration owed to a defendant.

By the same token, the government is entitled to no less consideration. In fact, both the government and the defendant are equals in this court, which is a court of justice to all parties.

Your final role is to decide and to pass upon the facts, the issues of fact. You, the jury, are the sole and exclusive judges of the facts. You pass upon the weight to be given to different portions of the evidence. You determine the credibility of the witnesses. You resolve any conflicts in the evidence.

In passing on the facts, you will draw reasonable inferences from one fact in evidence to another fact. This relates to what we call circumstantial evidence, and I will instruct you on that a little later.

My function as the Court is to instruct you

lhjw 237

on the law, and it is your duty to accept these instructions on the law whether or not you may agree with them, and then it is your duty to apply the rules of law to the evidence and arrive at a verdict at the conclusion of your deliberations.

With respect to any matters of fact, it is your recollection of the evidence that governs. Each of the attorneys has given you his summation as to what he contends has or has not been proved in the evidence, but the summations are not in themselves evidence and are not to be substituted for your recollection of the evidence.

The evidence consists of the testimony from the witness stand, any exhibits which have been admitted into evidence and in this case in some instances consists of testimony of certain witnesses given at grand jury proceedings.

The fact that rulings have been made by me during the trial on procedural matters or on evidence matters or on other questions of law, the fact that occasionally questions have been asked of witnesses by me, none of these things should be taken in any way to indicate any view of mine as to what your verdict should be. Nothing whatever in these instructions should be

taken by you as an indication of what your verdict should be.

A little later I will summarize some features of the evidence, but I will remind you then, as I will remind you now, that you are the sole judges of the facts. If your memory of the evidence differs from what I say to you, it is your memory which governs. My summary to you will be simply to assist you in organizing the issues which you are to be working on, and hopefully my summary of the evidence, some features of the evidence, will refresh your memory this morning as to other points of evidence.

But as I will say to you later, and I want to emphasize it now, it is your memory of the evidence that governs and your obligation is to consider all the evidence, and not just what I mention to you or the attorneys mention to you. You are certainly in no way bound by what we say the evidence is, as I have indicated.

I want to make clear that just as you respect my role as the Court, I thoroughly respect yours as the finders of the facts, and I have no intention whatever to tread upon that or interfere with it.

I told you at the beginning of the trial and I will repeat again now, the indictment is merely an accusation.

lhjw 239

It is a charge of crimes alleged to have been committed. It is no evidence or proof of guilt. No weight whatever is to be given by you to the mere fact that an indictment has been returned against the defendants. It is the evidence in the trial that matters and the evidence alone.

The defendants have pleaded not guilty, which means that the government has the burden of proving the charges against them beyond a reasonable doubt. A defendant does not have to prove his innocence. He is in fact presumed to be innocent of the accusations contained in the indictment.

This presumption of innocence was in his favor at the start of the trial, it is in his favor as I instruct you now and it remains in his favor during your deliberations in the jury room. It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of the defendants beyond a reasonable doubt.

What do we mean by a reasonable doubt? A reasonable doubt is a doubt founded in reason, arising out of the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which appeals to your judgment, your common sense, your experience, but all of this is in

lhjw 240

contrast to some things which it is not.

It is not caprice, whim, speculation, mere suspicion. It is not sympathy, a desire to avoid an unpleasant duty, mere personal feeling, that kind of thing. The key word is reasonable.

Now, if after a fair and impartial consideration of all the evidence you say that you are not satisfied as to the guilt of a defendant, if you have a doubt which would cause you as prudent persons to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt, and in that circumstance it is your duty to acquit, to return a verdict of not guilty.

On the other hand, if after a consideration of all the evidence you candidly and honestly say that you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing to act upon in important matters in your own lives, then you can say that you have no reasonable doubt, and under those circumstances it is your duty to convict.

One final word on this subject. Proof beyond a reasonable doubt does not mean proof to a positive certainty or beyond all possible doubt. If that were the rule, few persons, however guilty, would ever be convicted. It is practically impossible for any of us to be absolutely

lhjw 241

and completely convi ced of any controverted fact, unless possibly in the realm of mathematics, or something like that.

So the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, but not beyond every possible doubt.

As I said at the beginning of the case, you are obliged to make the determination on the credibility of the witnesses. How do you evaluate the credibility of the witnesses?

In the first place, you bring into the courtroom with you your everyday common sense, your good judgment and your experience. You will bring these faculties to bear when you evaluate the witnesses and their credibility.

You have, of course, heard the witnesses on the stand and you have observed their manner of testifying. You will consider your basic impression as to whether or not each witness was telling the truth, was giving you a candid and accurate version of what occurred or was doing otherwise.

In arriving at your basic impression of whether a witness was or was not telling you the facts, it is well

lhjw 242

to keep in mind that witnesses are human beings from a variety of walks of life and backgrounds. The ultimate question is not whether you have a personal like or dislike or a personal respect or disrespect for the witness.

The final question as to each witness is whether in view of all the circumstances you believe that the witness has told you facts which you can rely on and which contribute to your knowledge of the factual picture in this case.

It is up to you as the jury to determine whether any of a witness' testimony is accurate and believable, whether all of it is or whether none of it is.

I mentioned above your basic impression of the witness, which is the starting place, but as I indicated a few days ago in my initial discussion of this matter, you will also consider things beyond your basic impression of how the witness appears.

You will consider how his testimony jibes or coincides or does not jibe or does not coincide with other evidence in the case. You will consider the basic probability or improbability of a witness' testimony. You will consider any inconsistencies. Has the witness testified differently within the testimony in court? Has he said one thing at one time and another thing at another

lhjw 243

time?

Has he said something different here from what he said on a prior occasion? That is to be considered by you in determining his credibility.

If you find that inconsistencies or contradictions have been given in this way, then you weigh how important they are. Are they trivial, are they enough to make you have doubt about the witness' basic testimony?

In this case in one or two instances the government read from the grand jury testimony of a witness, and you may find that the grand jury testimony was in some respects different from testimony given here in court.

I am not saying that you should or should not so find, but I am just instructing you how to approach it, if you do find that there was an inconsistency. It is up to you to determine whether you accept either version or no version. You are entitled to decide that one version is the version you accept and the other that you reject. You are to weigh both versions, if you find that there are two versions.

You are entitled to consider whether a witness had a bias in favor of the government or against the government in determining the validity of his testimony. You are entitled to consider whether he had any fear of

lhjw 244

the defendants or any bias in favor of the defendants.

Again, I am not trying to indicate in any way that you should find those things. I am trying to indicate the questions that you are entitled to consider on this question of the credibility of the testimony you heard.

You are entitled to consider that certain of the witness' testimony, as I said, was valid and that certain of it was influenced in such a way as not to be credited.

Again I repeat, I am repeating it too much, that I am not suggesting that you do find these things, I am suggesting the kinds of consideration that are available to you, depending on what you work out on a sensible analysis and close analysis of this testimony.

I mentioned the term circumstantial evidence a few minutes ago. This term is used in contrast to direct evidence.

Direct evidence means basically the testimony of an eyewitness. Someone says that he saw something, he heard something, that kind of thing, that is direct evidence.

What is circumstantial evidence? Circumstantial evidence is where one fact or perhaps a chain of facts gives

rise to a reasonable inference of another fact. We always in these instructions try to give examples, and they are so unrelated to the case I do not know that they have much meaning, but maybe this will convey something to you.

Suppose I see fire engines going towards a building, sirens at full blast. The engines stop outside the building. A fireman rushes in and immediately rushes out and the fire engines go home. I have not seen any direct evidence on this point, but it is reasonable to infer from these circumstances that someone turned in a false alarm, that there was no fire and that the alarm was false.

Again, I did not see anybody pull the lever or pick up the phone, but it is reasonable to infer that that happened.

So if one fact or group of facts on the basis of common experience leads you logically and reasonably to infer other facts, then this is circumstantial evidence, and it is of no less value than direct evidence.

As you know, neither of the defendants testified in this case, and I instruct you that it was the absolute constitutional privilege and right of these defendants not to testify. The important point is for you to recognize

that and, furthermore, to make sure that you draw no inference whatever from the fact that the defendants did not testify.

In other words, when you are deliberating and you are assessing the items of evidence that you believe go to prove the government case or to weaken the government case, whatever way you are considering it, you cannot consider in any way the fact that the defendants did not testify. You can draw no inference from that whatever.

Now let us come to the charges in the indictment. The indictment contains two types of counts: A conspiracy count and certain others which we call substantive counts.

Count 1 is the conspiracy count and Counts 2, 4, 5, 6 and 7 are the substantive counts. Let me briefly describe the distinction.

May I ask you, as I understand it, the indictment is being retyped to take out Count 3?

MR. ABZUG: It has been redacted, your Honor.

THE COURT: Is the numbering going to remain the same?

MR. ABZUG: The overt acts have been renumbered, the numbers on the counts have not been renumbered.

THE COURT: Then we can use the same numbers.

Counts 2, 4, 5, 6 and 7 are the substantive counts. Let me briefly describe this distinction.

A substantive count charges a particular criminal act. A conspiracy count charges a conspiracy or agreement among two or more persons to carry out that criminal act.

The essence of the crime of conspiracy is the agreement to do an illegal act.

In describing to you the elements which the government must prove in order to establish the various counts, I believe it would be helpful if I start with the substantive counts, Counts 2 and so forth. I will read Count 2, and I will say to you now that you will have the indictment in the jury room during your deliberations and you can refer to it, so under no circumstances feel that you have to memorize this as I am reciting it or reading it. But by way of background, I will read you the exact language.

"Count 2: The grand jury further charges from in or about January, 1968 up to and including in or about October, 1973, in the Southern District of New York and elsewhere, John Dinino and Vincent DeVito, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is means involving the use

lhjw 248

and express and implicit threats of use of violence and other criminal means to cause harm to the person, reputation and property of Ronald Levine in order to collect and attempt to collect extensions of credit from said Ronald Levine and to punish said Ronald Levine for the non-payment thereof."

As you know from hearing this language, this is somewhat complicated, legalistic language. It has a lot of "ands", and when I describe to you in a minute the elements that the government must prove, I am going to describe to you what this boils down to as a result of the evidence in this case, but that I will do in a moment.

Counts 4, 5, 6 and 7 are the same as Count 2, except that somewhat different starting dates are used and each of these other counts refers to a different alleged person who was the object of the alleged extortionate acts.

Count 4 refers to Philip Jackson, Count 5 to Sidney Shalkin, Count 6 to Charles Penker, Count 7 to Philip Cassese.

Each of these counts refers to the federal statute on which this case is based, and that is Title 18 United States Code, Section 894, which provides in pertinent

lhjw 249

part:

"Whoever knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extension of credit or to punish any person for the non-payment thereof is guilty of a crime."

An extention of credit is any loan of money and also includes a gambling debt. The phrase extortionate means is defined as any means which involves the use or an express or implicit threat of use of violence to cause harm to the person, reputation or property of any person.

For the purposes of our case, this boils down to the following:

In connection with the collection of a debt, it is a crime to knowingly participate in any way in the use or the express or implicit threat to use violence to cause harm to the person of some other individual or person.

This statute reflects the concern of the Congress with certain practices associated with usurious loans. Such loans to individuals as a general rule are illegal under state law and cannot be enforced in any legal manner. The federal statute is designed to restrain the effort of usurious moneylenders from seeking extra legal methods of enforcing their illegal agreements.

lhjw 250

Of course, the crime charged here is not the making of usurious loan agreements. The crime charged as provided in the statute involves certain methods of collection of such debts as defined by the statute.

Let me list for you what you must find in order to convict on the substantive counts, Counts 2, 4, 5, 6 and 7.

In order to convict a defendant on any of these counts you must find that the government has proved beyond a reasonable doubt the following elements. I should note at this point that each of these counts alleges that both defendants participated in the alleged unlawful activity. However, as to each count you must determine whether the government has proved guilt beyond a reasonable doubt as to each defendant.

Some of the proof may logically bear on both defendants, but what I am saying is this. As to each count you must ask yourselves, has the government proved its case as to Defendant Dinino and then ask has the government proved its case against Defendant DeVito.

Here are the elements the government must prove beyond a reasonable doubt in order to convict on the substantive counts:

First, that the particular person referred to

in the count, such as Ronald Levine, et cetera, owed money on loans or gambling debts at some time during the relevant period; second, that the defendant on certain occasions collected or attempted to collect money from this other individual; third, that in collecting or attempting to collect such money the defendant knowingly participated in some way in the use of extortionate means, that is the use of violence to harm the person of the debtor or express or implicit threats to use such violence.

As to the first two elements, the necessity of proof of debts and collections or attempts at collections, no elaboration is necessary; however, I will give you certain instructions regarding the third element.

This element is satisfied if you find that the defendant in connection with collection efforts knowingly participated in some way in the use of violence to harm the person of the debtor or the element is satisfied if you find that the defendant knowingly participated in express or implicit threats to use such violence.

What is meant by an express or implicit threat? An express threat is one stated in words. An implicit threat is one which is intended to be understood from certain things that are said, although they are not direct threats, or is intended to be understood from jestures or

actions.

You have heard the testimony of certain of the debtor witnesses denying that they were threatened. It is for you to assess the credibility of this testimony as well as all the other testimony. You are to consider among other things whether this testimony is influenced by factors such as fear of the defendants.

I am not suggesting that this is the case, I am simply saying that this is one of the questions for you to consider.

I also instruct you that the testimony of a witness that he was not threatened, even if believed by you, is not conclusive or binding upon you. You will consider this testimony, but you will also consider all the other testimony about the defendants' statements and conduct and about the surrounding circumstances, and you will make your own determination as to whether the government has proved that express or implicit threats were made or participated in by a defendant.

Normally we understand a threat to be something which causes fear. You have heard the testimony of certain of the debtor witnesses denying that they were made to be afraid. Again, it is for you to assess the credibility of this tesitmony.

lhjw 253

But, in any event, it is not necessary for the government to prove that fear was actually induced in the debtor. It is the conduct of the defendant rather than the debtor's individual state of mind to which the statute is directed.

What the government must show in order to convict for an unlawful threat here is that the defendant intended to instill fear in the debtor by words or actions reasonably calculated to do so.

The defendants contend that the alleged threats were merely the normal earthy language of the kind of people involved in these transactions and in this environment, and that the government has not proved that the statements in question were intended to arouse fear or were reasonably calculated to arouse fear.

It is for you to determine whether the language used falls in the category of a threat. In this connection you will, of course, consider the circumstances of the utterances in determining whether they were intended to have a threatening meaning or were merely intended to have a jocular or joking or innocent meaning.

You will also consider the testimony of certain of the debtor witnesses to the effect that they repeatedly over long periods of time sought out the financial

lhjw 254

assistance of one or both of the defendants, accepted the arrangements and had friendly relationships with the defendants. You will weigh this testimony like all the testimony as to its credibility. You will consider it on the question of whether the government has proved its case of violence or threats of violence.

But I charge you that if you find that there was violence or were threats of violence, it is no defense that the debtors were generally friendly with the defendants or submitted to or tolerated these conditions.

I also charge you that it is not necessary that the defendant personally inflict the violence or the threat of violence. The statutory language is "Knowingly participates in any way." Thus, if you find that one defendant arranged to have the other defendant or still another person, such as Louie referred to, go to the debtors to collect money with the knowledge that they would use violence or threats of violence, and if such violence or threats of violence were actually used, then this would be knowing participation within the meaning of the statute.

Now let me instruct you on the conspiracy count, Count 1. I will read it to you:

"The grand jury charges: 1. From in or about January, 1968 and continuing up to and including October,

lhjw 255

1973, in the Southern District of New York and elsewhere, John Dinino and Vincent DeVito, the defendants, together and with each other and with other persons to the grand jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree to commit certain offenses against the United States, to wit, to violate Title 18 United States Code, Section 894.

"It was part of said conspiracy that said defendants would and did agree to and would and did participate in the use of extortionate means, that is means involving the use and express and implicit threats of violence and other criminal means to cause harm to the person, reputation and property of Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz in order to collect and attempt to collect extensions of credit from said persons and to punish said persons for the non-payment thereof."

Paragraph 3 of Count 1. "Among the means whereby the defendants would carry out their agreed upon unlawful purposes were the following:

"A, the defendant John Dinino would loan certain sums of money at rates of interest exceeding fifty percent per annum to Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel

lhjw 256

Herskowitz.

"B, the defendant John Dinino would collect and direct the defendant Vincent DeVito to collect weekly payments of money which the defendant John Dinino claimed were owing to him by Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz.

"C, the defendantsJohn Dinino and Vincent DeVito would make express and implicit threats of physical injury to Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz in the course of collecting and attempting to collect said payments and for the purpose of inducing these persons to make said payments.

"Overt Acts. In furtherance of said conspiracy and to effect the objects thereof, the defendants in the Southern District of New York committed and caused to be committed the following overt acts, among others:

"One. In or about October, 1971, the defendant John Dinino received a sum of money from Philip Jackson at Al's Taxi, 5975 Broadway, Bronx, New York.

"Two. In or about October, 1968 the defendant John Dinino met with Ronald Levine at the Carter Cab Company, 6087 Broadway, Bronx, New York.

lhjw 257

"Three. In or about October, 1971 the defendant John Dinino loaned a sum of money to Sidney Shalkin.

"Four. In or about March, 1972 the defendant John Dinino loaned a sum of money to Charles E. Penker.

"Five. In or about August, 1969 the defendant John Dinino met with Samuel Herskowitz at the Carter Cab Company, 6087 Broadway, Bronx, New York.

"Six. In or about the months of April, May and June, 1972, the defendant Vincent DeVito met with Philip Cassese at the Carter Cab Company, 6087 Broadway, Bronx, New York."

The statute on which Count 1 is based is the same as that which relates to the substantive counts. It is 18 United States Code, Section 894.

The statute not only makes it a crime to participate in the use of extortionate means for the collection of debts, but it also makes it a crime to conspire to do so.

In order to find a defendant guilty under Count 1, you must find the following elements beyond a reasonable doubt:

First, that at sometime between January, 1968 and October, 1973 the defendants entered into an agreement

to use violence or express or implied threats of violence to harm the persons of others in order to collect debts; second, that at least one of the defendants committed at least one of the alleged overt acts set forth in the indictment in furtherance of the conspiracy.

Now for some elaboration of these elements of the crime of conspiracy.

A conspiracy, sometimes referred to as a partnership in crime, presents a greater potential threat to the public interest than the illegal activity of a single individual. Concerted or collective action for criminal purposes often makes possible the attainment of ends more complex than those which an individual acting alone would be able to accomplish. Group association increases the likelihood that the criminal object will be successfully realized and renders detection more difficult than in the instance of a sole wrongdoer. It is for these reasons that Congress has made conspiracy a separate crime.

What is a conspiracy? A conspiracy is a combination or agreement of two or more persons to accomplish a criminal or unlawful purpose by concerted action. The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law.

lhjw 259

However, to establish a conspiracy, the government is not required to show a formal agreement or indeed to show direct evidence of the actual making of an agreement.

In determining whether there has been an unlawful agreement, you will view the acts and statements of the alleged members of the conspiracy. You will consider whether these actions and statements of the defendants when taken together with the reasonable inferences flowing from this evidence show that a conspiracy or agreement of the kind referred to in the indictment was made.

If upon such consideration of all the evidence, both direct and circumstantial, you find beyond a reasonable doubt that the defendants agreed to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the conspiracy is established.

In order to convict a defendant on Count 1, the conspiracy count, you must find beyond a reasonable doubt that the defendant participated in the common scheme with the intention of assisting in the illegal objectives, that is the use of violence or threats of violence to obtain collection of debts.

I will now turn to the second element which must be proved in order to convict a defendant on the

conspiracy count. This relates to what we call overt acts.

If you find that the defendants entered into the conspiracy of the kind alleged, you must still be satisfied before you can convict that at least one of the defendants committed at le st one of the overt acts alleged in the indictment.

An overt act simply means an act charged as having been committed by one of the conspirators in an effort to effect or accomplish the object or purpose of the conspiracy.

An overt act is not required in itself to be a crime considered separately, but it must be an action, some action, taken to achieve or further the purpose or object of the conspiracy.

The law requires proof of such an act on the premise that while people might conspire and agree to do an unlawful thing, they might change their minds before anything was done to carry out the unlawful purpose.

In that event, it has been thought that the plan or scheme, when there is no action to effect it, ought not to be condemned as criminal.

I have read to you the list of the alleged overt acts and I need not repeat that. I simply reiterate that the government must prove one of these overt acts.

It follows, of course, that the government need not prove all of them.

Now I come to a summary which I will give of certain of the evidence in the case. I want to repeat my caution, that if my statement of the evidence does not accord with your memory, your memory controls because you are the exclusive triers and finders of the facts. I will also reiterate my cautionary statement that my summary will not include all the evidence. My purpose is to help organize for you the issues which you are to decide and to state certain salient features of the evidence in the hope that they will remind you this morning of other evidence.

But all the evidence is relevant and you must consider all the evidence in ariving at your verdict. My summary will in general follow the order of the witnesses as these witnesses relate to the substantive counts.

In other words, the first substantive count refers to Ronald Levine, and I will summarize his evidence first. I will summarize the other witnesses or others of the witnesses in the order of the respective substantive counts.

Ronald Levine testified that he met Dinino and

DeVito together at Al's Taxi in late 1970 and borrowed $500 on behalf of Philip Jackson. Although Levine did not mention Jackson's connection to either Dinino or DeVito then.

In February or March, 1971, according to Levine's testimony, Levine observed an argument between Dinino and Jackson when Jackson was insisting that the loan should now be treated as Jackson's loan, not Levine's loan.

Levine testified that he heard Dinino say that he would kick Jackson in the balls if Jackson did not stop arguing. Levine testified at the trial that he felt uneasy as a result.

Levine testified before the grand jury that he was frightened. Levine testified that in the summer of 1972 he borrowed $300 from DeVito. He testified that DeVito was a perfect gentleman. Levine testified that he made payments to DeVito until early 1972 and then made payments to Dinino, and this loan was paid off.

Levine testified that he borrowed $300 from Dinino in September, 1972 and that later Dinino repaired Levine's car for $275. Levine testified that he then made an additional loan, bringing the loans and auto repair balance up to $1,000.

Levine testified that in late 1972 he gambled with Dinino for about a month or gambled through Dinino for about a month. Levine testified that at one point he told Dinino he could not pay a $500 gambling debt. Levine testified that Dinino said "I don't want to hear it, I have to have the money."

Levine testified before the grand jury that on this occasion Dinino said he would send around a few guys to straighten Levine out, that Levine was afraid and paid because he was afraid of things like having his legs broken.

Levine testified at the trial that he gave this grand jury testimony under pressure from the federal attorney. Levine testified at the trial that after this conversation with Dinino he borrowed the $500 from another lender, Norman Ralsky, and paid Dinino.

On cross examination Levine testified that neither Dinino nor DeVito ever threatened him, that he was on friendly social terms with Dinino, and that he felt both Dinino and DeVito were doing him favors.

Levine testified that the expressions used by Dinino were the way the men talked and meant nothing. Levine testified on cross examination that in an FBI interview he had failed to admit knowing Dinino or DeVito

lhjw 264

because he did not want to see them get sent up.

Philip Jackson testified that he borrowed money from Dinino beginning in late 1970 and that Dinino introduced DeVito as his partner in mid-1971 as someone who could receive payments if Dinino was not there.

Jackson testified that he gambled through Dinino in the fall of 1971 and arranged for Ronald Levine to borrow $500 from Dinino without revealing that the loan was for Jackson. Jackson testified that one week he lost $1800 on gambling. He asked Dinino for a couple of weeks to pay and Dinino said okay. Two weeks later, according to Jackson, Jackson told Dinino he needed another two weeks.

Jackson testified that Dinino said he did not want to hear any more stories and wanted money that Friday. Jackson testified he got worried. However, Jackson did not pay that Friday. The next Wednesday, according to Jackson, Jackson said he wanted to pay everything off at $25 a week. He said this to Dinino.

Jackson testified that he did not then reveal to Dinino his part in the $500 Levine loan. Jackson testified that Dinino said he was crazy and had better come up with $100 per week. Jackson's testimony was that he was proposing $25 a week. Jackson testified that that

lhjw 265

Friday he revealed the situation regarding the Levine loan and insisted that it should be treated as his loan.

Jackson testified that there was an argument in which Jackson said Dinino would have to accept Jackson's terms or get nothing. Jackson testified that Dinino replied "For two cents I will bust your balls right here."

Jackson testified that the following week he agreed with Dinino to Pay $100 a week for all obligations, including the Levine loan. Jackson testified that he considered there were two offices involved, one for gambling and one for lending, and that one of them might hurt him.

Jackson testified that he made payments for about three months of $1200 to $1300 total. Jackson testified that he then told Dinino he could not make it and asked for a reduction to $10 per week. Dinino agreed to this.

Jackson testified that in mid-1972 DeVito said that for the next three to four weeks payments should be made to Louie, who then came nine or ten times. According to Jackson on the second trip Jackson observed Louie trying to collect from Shalkin.

Jackson testified that he asked Louie why he was acting so rough with Shalkin. Jackson testified

that Louie pulled out a revolver and said "For two cents I will blow your brains out."

On cross examination Jackson testified that he was never physically harmed and that at the time he requested the payment reduction to $10 he was not threatened. He testified that he was not impelled to complain to the police, but he was afraid.

Sidney Shalkin testified that he borrowed money from Dinino beginning in 1972. The first loan was for $200 plus interest to be paid at the rate of $25 per week for twelve weeks. Shalkin testified that he made six or seven payments to Dinino and then became ill for two months; he had heart disease and diabetes.

Shalkin testified that when he got back to work he explained this to Dinino. Shalkin testified that Dinino said he might get a punch in the nose. Shalkin resumed his payments and got two or three additional loans. Shalkin paid DeVito on one occasion. Shalkin finished paying off his loans, according to his testimony.

On cross examination Shalkin testified that the punch in the nose remark could be a figure of speech and that Dinino never hurt him.

Charles Penker testified that he borrowed money from Dinino in the spring of 1971. At some point,

lhjw 267

according to Penker's testimony, Dinino introduced him to DeVito and said DeVito was his partner and could receive payments when Dinino was not around.

Penker according to his testimony, made payments to both Dinino and DeVito. There were further loans following this first loan, according to Penker's testimony. Penker testified that he overheard a conversation between DeVito and Cassese. Penker testified that Cassese said that DeVito was cheating him. Words were exchanged. DeVito said that he was not cheating him.

According to Penker's testimony, DeVito slapped Cassese in the face and Cassese's glasses fell off. One of the loans made to Penker according to his testimony was a $500 loan to purchase a car. This loan was made in January, 1972. Early in the fall of 1972, according to Penker's testimony, the car broke down. He took it to Dinino's service station for repair. The bill was $300 to be paid at $50 per week.

Penker testified that in January, 1973 he had an argument with Dinino. Penker testified that he told Dinino that his remaining balance was $100. Penker testified that Dinino said he wanted $300 and that he wanted all his money in.

Penker testified that Dinino said he was getting out and told Penker not to get him pissed off. Penker testified that at this point Dinino was a changed man. Penker testified that he subsequently went to a second lender and borrowed $200 to pay Dinino because he wanted Dinino off his back.

Penker testified that in May, 1973 he saw Dinino who said that he wanted his remaining $100. Penker said he did not have it. Penker testified that Dinino asked for a $10 payment, after which Penker obtained a $10 money order which was given to Dinino.

Penker testified that in July, 1973 Dinino asked for the $100 balance. Penker testified that he gave him a $50 personal check endorsed or noted to refer to fictitious repairs on the automobile.

According to Penker's testimony this check bounced and Penker bought a $50 money order which he then gave to Dinino.

On cross examination Penker stated or testified that no threats had been made to him and that he had a business-like relationship with Dinino. Penker also testified that DeVito had never threatened him.

Philip Cassese testified that he obtained loans from Dinino. Cassese testified that in the late

lhjw 269

spring or early summer of 1972 he had a conversation with DeVito and that DeVito slapped him in the face and his glasses fell off. Cassese testified that he provoked the fight, that he said among other things that he had paid off fully the loan.

On cross examination Cassese said that he never felt coerced or threatened, that he made his borrowings voluntarily. Cassese testified that he made further payments after the slapping incident, but testified on cross examination that he would have made them anyway, if they were owed.

One final witness whose testimony I will summarize briefly is Samuel Herskowitz. There is no substantive count involving Samuel Herskowitz but Herskowitz is referred to in the conspiracy count, and, in any event, his testimony is in evidence and you are entitled to consider it.

Herskowitz testified that he met Dinino back in 1965 and made various loans from him thereafter. These loans continued into 1968 and thereafter. He testified that he would make payments to Dinino. Herskowitz testified that at one point his wife, who was one of the earners in the family, broke her ankle.

Herskowitz testified that he told Dinino about

lhjw 270

this and said that he could not make the payments due at that time. Herskowitz said Dininc said this was fine, that he could make the vigorish payments of $10 a week. He made these payments, eight in a row.

Herskowitz testified that he made these vigorish or interest payments until he became sick in July, 1970 from diabetes complications and a spine condition. He was out of work, according to his testimony, for three months. After two of these months, he went up visiting according to his testimony at Carters.

Herskowitz testified that Dinino grabbed Herskowitz by the arm and asked "Where is the money you owe me?" Herskowitz testified that after a few minutes Dinino calmed down and there was some agreement.

Herskowitz testified that he was afraid at the time because he was sick. Herskowitz testified that after about another month he resumed work and resumed making the payments to Dinino.

Herskowitz testified that one day Dinino introduced him to DeVito and said that DeVito could take payments when Dinino was not there.

On cross examination Herskowitz testified that at the arm grabbing incident Dinino became friendly after about ten minutes and never hurt his physically. Herskowitz

lhjw 271

testified that he was not afraid at the time of these transactions, but testified that he was afraid on the stand.

One further witness was Sherman Ronson, and as I explained to you earlier I have dismissed the substantive count relating to Sherman Ronson and I have stricken the references to Sherman Ronson from the conspiracy count.

However, Ronson testified. I do not think it would be of any use to summarize his testimony in any detail, but you are entitled to consider it to the extent you believe it relates logically to the case.

In summary Sherman Ronson testified to various loan transactions and did not testify to any threats of violence or any violence.

You have heard certain witnesses testify as to the character of DeVito as to his reputation for non-violence and peaceable character. You are entitled to consider that testimony as you do all other testimony, and in an appropriate circumstance, if you felt that the testimony was of this weight, it could be sufficient to create a reasonable doubt as to the guilt of DeVito.

I am not suggesting it should or should not. I am simply indicating the type of consideration which you

are to consider in evaluating this testimony. However, if you believe that the government has proved that in these instances the defendant DeVito did violate the law and committed the criminal acts alleged, it is no excuse for DeVito, the fact that he had generally good character or character of the kind testified to by these witnesses.

In conclusion, if you fail to find beyond a reasonable doubt that the law has been violated or if you fail to find beyond a reasonable doubt that the defendants have committed the offenses charged in this indictment, then you should not hesitate for any reason to find a verdict of acquittal as to such unproved charge.

But, on the other hand, if you find that the law has been violated as charged as to the defendants, you should of course not hesitate because of sympathy or any other reason to render a verdict of guilty.

Upon your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon a defendant if convicted to influence your verdict in any way or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively on the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and the law.

lhjw 273

When you proceed to your deliberations, please have in mind that each of you is entitled to your own sincere good judgment. At the same time, it is expected that you will exchange views with your fellow jurors. This obviously is the essential purpose of jury deliberations, to discuss and consider the evidence together and listen to the arguments of your fellow jurors. This means, of course, that you will present your own point of view as well as listening to and considering other points of view.

Any verdict rendered by you on any count must be the unanimous verdict of each one of you. While the objective of your deliberations is to reach a verdict if you can and while you must be unanimous to render a verdict, each individual juror must cast his vote in good conscience based on his ultimate judgment, after considering all points of view and testing his own beliefs against those of his colleagues.

If you find during your deliberations that you have need to hear any of the testimony read to you or any portion of the instructions read or clarified, please send a note with this inquiry to the Court through your foreman. There will be marshals outside the jury room and they will accept any notes that you need to convey to the

Court.

You are entitled to have the indictment in the jury room. As far as the exhibits, I do not think there are many exhibits, you can have those upon request.

Let me say one thing about the rereading of testimony or instructions. Such a repeating is sometimes necessary, but inevitably it causes an interruption in your deliberations.

What I suggest to you is that before you send out a note asking that something be reread, trade your recollections. Sometimes if one or two people cannot remember, somebody else in the jury can. So it is well worth trading your recollections before you request the rereading of any material.

Juror Number 1 will be the foreman, unless she declines to serve, and then you will elect another one of your members as your foreman.

Your verdict will be guilty or not guilty separately as to defendant Dinino and then as to defendant DeVito on each of the counts of the indictment. That verdict should be rendered in open court when you are ready. When you are ready with your verdict, please send a note through your foreman announcing that you are ready.

Please do not put the verdict in the note

lhjw 275

because, as I said, the verdict should be rendered in open court.

If you will hold your places for just a minute, I will see if the lawyers have anything to add or to correct with respect to the charge and we will be right back with you.

end charge

(In the robing room)

THE COURT: Let's have the government's exceptions.

MR. ABZUG: The government would have liked the instruction that we discussed yesterday about the man who is intended to presume the natural consequences of his acts with respect to the substantive offenses, your Honor.

THE COURT: I did not discuss it with you this morning, but I purposely omitted that after reviewing the authorities.

MR. ABZUG: The only other thing I might mention, your Honor, is that it might have been useful perhaps to have an aiding and abetting charge with respect to the substantive counts, just to make clear to the jury that--

THE COURT: I considered that and rejected that.

MR. ABZUG: We have no other exceptions.

THE COURT: The defense?

MR. BLOUSTEIN: Your Honor, may we have a charge that if the jury finds that any witness lied in any regard they could discount the entire testimony?

THE COURT: No, I will not have that.

lhjw 277

MR. BLOUSTEIN: I respectfully except.

THE COURT: Mr. Peluso or Mr. Wallach?

MR. WALLACH: Your Honor, unless I misheard, I don't want you to think that I am misinterpreting the charge, your Honor, I take exception to your charge -- to that portion of your charge relating to inconsistencies in the grand jury testimony.

I would suggest most respectfully, your Honor, that your Honor repeatedly, the way I heard it, stated about witnesses, the jury may entertain -- consider a bias of witnesses against the government and also further instruction or comment that the jury should consider fear of the defendants on the part of the witnesses.

THE COURT: I will not withdraw from that. You have your exception.

MR. WALLACH: I just wanted to state it.

I would suggest further that your Honor did not tell the jury that they can also consider in assessing credibility a bias on the part of a witness against the defendants. I may have misheard you, your Honor.

MR. ABZUG: It is my recollection that you did, your Honor.

MR. WALLACH: So I may have misheard you.

THE COURT: I meant to have that in. If I

misspoke on that --

MR. WALLACH: The acoustics are not good.

MR. ABZUG: I believe in your opening remarks, that's exactly what you stated, your Honor.

THE COURT: I do not mind clarifying that. I think it should be balanced. If there is any chance I omitted that -- give that to me again.

MR. WALLACH: I claim, your Honor, that your Honor stated that the jury could consider the fear of the witnesses or consider a bias against the government on the part of the witnesses, and I would suggest to your Honor that they also be told to consider the bias against the defendants.

THE COURT: That is a good point. That should certainly be in there. I will not take a chance on that.

MR. WALLACH: Also I take exception, I will be brief, to your Honor explaining the congressional concern and intent, the congressional intent underlying the statute.

Your Honor, the defendants except to sending the indictment into the jury. I would just add that your Honor I believe yesterday said that you are striking from the indictment the phrase "other criminal means."

lhjw 279

Yet if the indictment goes into the jury, that may be there.

At any rate, we take exception to the indictment going before the jury.

THE COURT: I will deny that. I think that there is obviously a certain amount of verbiage in the indictment which is now pretty much out of the case. I think I made that clear enough to the jury.

Are those all the exceptions you have?

MR. WALLACH: I have a few more.

THE COURT: All right.

MR. WALLACH: I believe your Honor told the jury they can disregard the witness' testimony that he wasn't threatened.

THE COURT: No, I did not say disregard --

MR. WALLACH: That's the way I got it. I think your Honor charged the jury, I take exception, the jury can disregard the denial of fear by the witnesses. I don't mean to distort anything, Judge.

THE COURT: I understand your point, but I will not change that portion.

MR. WALLACH: I take exception to your Honor's statement to the jury that they should not consider -- that friendship with the defendants on the part of the

lhjw 280

witnesses is no defense. It may not be a defense, but it certainly goes into the question of credibility.

THE COURT: I will not change that.

MR. WALLACH: Could I just ask the other lawyers whether they have anything else?

(Pause)

MR. WALLACH: That is all, Judge.

MR. BLOUSTEIN: Judge, not on the charge but on the recess that is coming up, could the lawyers be excused for an hour after the jury comes back because I think it could be assumed that they are not going to come back immediately upon their return from lunch, and if we could get an hour -- I just moved my office and --

THE COURT: The problem I have got is the lawyers can certainly be excused while the jury is at lunch. As far as your further request, it presents a problem to me in this way.

If the jury comes back with a note with a question, then I am stuck. If you and your client want to authorize Mr. Peluso and Mr. Wallach to stand by for you, I will allow it under those conditions.

MR. ABZUG: That presents certain conflicts, would it not, your Honor?

Mr. Peluso would represent Mr. Dinino --

lhjw 281

THE COURT: I think we would have to use some common sense. If it got to be a point where it was mandatory that Mr. Bloustein be here -- let's cover that in a few minutes. Let's let the jury go and we will talk about that another minute or so.

MR. ABZUG: I eliminated Count 3 and the references to Sherman Ronson.

THE COURT: All right, here is a redacted copy of the indictment changed to omit the references to Sherman Ronson and the lawyers can look at this, and unless I hear any objections, this will be sent to the jury right after they go into the jury room.

MR. WALLACH: That doesn't obviate the objection I already made to the indictment.

THE COURT: Oh, no, no, this is just on this one point as to form.

MR. BLOUSTEIN: The only change is the deletion or the reference --

THE COURT: Let's go out.

MR. BLOUSTEIN: Yes, I have no objection.

(In open court)

THE COURT: Ladies and gentlemen, I will only make one clarification of the charge. I think I had it in but in case I did not, I will just bring it out now.

lhjw 282

On the question of credibility of witnesses, I mentioned to you that you could consider -- let me just say what I meant to mention and I hope I mentioned and I will mention it now, on the question of bias or hostility or friendly feeling, obviously, you can and should consider any indications that you see of any bias in favor of the government or in favor of the defendants.

If you see any indication of any hostility towards the government or hostility to the defendants, that should be weighed.

You have observed the witnesses. In other words, it works both ways. If I did not indicate that in my earlier charge, then that was a mistake.

At this point we will dismiss the alternate with our thanks. You were our insurance policy against the collapse of the trial. If one of the regular jurors had become indisposed during the trial, we could not have gone on without you, but at this point only the twelve -- only twelve jurors can deliberate and reach a verdict, so we express our thanks to the alternate and you are excused.

(Alternate juror was excused)

(One marshal was duly sworn at this time)

THE COURT: The redacted copy of the indictment,

lhjw 283

is that all set?

MR. PELUSO: Yes.

THE COURT: That is being handed to the foreman of the jury.

On the question of timing, arrangements have been made to take you out to lunch, and as far as your progress this afternoon, we are pretty much at your disposal. You see how you go along and the main thing is not to set for yourselves any arbitrary time limits at all. The important thing, the essential thing, the only thing you should be concerned about, is doing the right kind of a job. Time schedules will yield to that.

(Jury commenced deliberations at 12:10 p.m.)

(At the side bar)

(A note from the jury was received at 2:44 p.m. as follows: "We would like to hear Mr. Jackson's testimony and Mr. Levine's testimony. Signed by The Foreman."

THE COURT: I am recalling the reporter now and that is a substantial block of testimony and if the jury wants to have it read, is there any objection to reading it?

MR. BLOUSTEIN: I have none.

MR. WALLACH: I consent.

lhjw 284

MR. ABZUG: None, your Honor.

THE COURT: I am trying to get this jury picked. The courtroom across the way is vacant and you can have this read without my being present, can you not?

MR. WALLACH: That I don't know, Judge. I just don't know.

THE COURT: Then I will have to postpone it until tonight. I am picking a jury right now.

MR. WALLACH: Judge, don't misunderstand me. I have no objection. I am trying to be objective.

What does Mr. Abzug say?

MR. ABZUG: Fine. I don't want to indispose you. I don't see why it cannot be read.

THE COURT: I see no problem. I will go into the room when the jury convenes and I will explain what I am doing and I will apologize to them, but then absent myself.

MR. ABZUG: If we have any problems we will bring it to your attention.

THE COURT: Is that all right?

MR. WALLACH: Sure. I am not looking for any problems.

(In open court - jury present)

lhjw 285

(Court Exhibit C marked)

THE COURT: We got your note, and I am afraid it was about forty-five minutes ago, asking for the testimony of Jackson and Levine to be reread. It took a little time to get the reporters who had taken those minutes, but they are ready to reread that testimony.

I am going to ask your indulgence, and I have asked the attorneys to excuse me, I am starting another trial across the hall. I do not believe from a practical standpoint I am needed here. I am right across the hall if there is any necessity, and it is not that I am trying to be rude to you in any way, but I can make headway on the other trial. That would permit you to listen to the testimony as much as you need, and if there are any problems, my law clerk, Mrs. Jackson, is here and she can get me instantly. I will excuse myself.

Let me say we are at your disposal as far as this reading. This is a substantial block of testimony and for some reason three reporters are involved. If you reach the point where you have heard what you need to hear, you can indicate -- I am sure you all know, I am not trying to inquire into what your deliberations were, but you are free to signal and caucus for a minute and then state that you have heard all you need to hear.

lhjw 286

Or if the time comes you believe that you can caucus and come back and narrow your request, you can do that. Do whatever will be most efficient.

Is that agreeable with the lawyers?

MR. ABZUG: Yes, your Honor.

MR. BLOUSTEIN: Yes, your Honor.

MR. PELUSO: It is agreeable.

(Record read)

(Jury not present)

THE COURT: Let me hear from you what occurred as far as the reading. How much was read?

MR. ABZUG: The direct testimony of Philip Jackson was read, your Honor,the majority of the direct testimony of Philip Jackson, and the jury indicated almost towards the end of the direct examination that they didn't wish to hear any more.

THE COURT: Then they recessed, went back to the jury room?

THE CLERK: They asked to caucus.

THE COURT: We got a note, I think it was received at 4:25 p.m., "Thank you, we would like to cancel Mr. Levine's direct testimony but would like his grand jury testimony admitted as evidence. No further requests at this time for Jackson."

lhjw 287

The note is a little ambiguous.

MR. ABZUG: I don't believe it is ambiguous at all, your Honor. There were portions of Ronald Levine's testimony that was read into the record. We could find those portions in the tape and read those to the jury.

MR. WALLACH: It was Cassese.

MR. ABZUG: No, it was Levine.

THE COURT: Let me just check because we have got notes.

That is right at the beginning of the morning.

MR. ABZUG: According to my recollection there were two occasions where Mr. Levine's grand jury testimony was read into the record.

The first incident concerned his emotional state at the time that he witnessed the argument between Philip Jackson and John Dinino. He testified on direct that he was uneasy. I read his grand jury testimony about that particular incident in which he concluded that he was frightened. That's what I think the jury wants to hear on that.

The second incident where I read in the grand jury testimony pertained to what Dinino said to Mr. Levine when Mr. Levine said he couldn't pay the gambling debt.

lhjw 288

Mr. Levine testified that John Dinino told him he had to pay and had to come up with the money.

In the grand jury Mr. Levine said that Mr. Dinino said that he had to come up with the money, "And if you don't I am going to send some guys down to straighten you out."

Those are the two portions I believe the jury wants to hear.

THE COURT: I just would like to get my notes and I would like to review those for just a moment, please.

(Pause)

THE COURT: I think that Mr. Abzug is correct.

MR. BLOUSTEIN: In view of the fact that there is some uncertainty about it, can't we have the jury indicate more specifically what they want?

THE COURT: I do not think there is any uncertainty. They asked for the grand jury testimony of Levine. When I read their note, I did not recall that grand jury testimony of Levine was in for the moment, but it is in.

MR. BLOUSTEIN: I agree that they did ask for that, it is obvious, it says that. But do they also want cross examination on the -- relative to the grand jury testimony?

lhjw 289

THE COURT: I get your point, but let's follow-- we could begin expanding and suggesting a lot of things that the lawyers would want.

I think we ought to stick to what the jury has asked for, and if they want more I am sure they will ask for more. Let's stick to the grand jury testimony.

(Record read)

MR. ABZUG: The request was only for the grand jury testimony --

MR. BLOUSTEIN: If you cull out what Mr. Abzug wants, it presents a very unfair picture. The man was on the stand yesterday. It is reading another line. We are not here to give just what Mr. Abzug wants.

THE COURT: No, we are here to give what the jury asks for, and the problem is if we get beyond that, then we get into everybody jockeying around because they want this little piece that helps them and that little piece that helps the other.

MR. BLOUSTEIN: It is the answer that follows. It takes one second to read.

THE COURT: It does not matter. The question is if you get into that, then is the government going to want to put in some offsetting testimony about this pressure thing.

lhjw 290

MR. ABZUG: That is precisely right, your Honor, and therefore I would ask that the colloquy between myself and the defendant be stricken and that the request was for the grand jury testimony of Ronald Levine.

THE COURT: I am going to rule because I think we cannot -- I am going to rule -- can you do this, Mr. Reporter.

I want the grand jury testimony read and absolutely nothing else. No injections by the witness in court, no questions about whether this is his memory. I want the grand jury testimony and that testimony alone read. Carve out the other, because I do not think it is an artificial carving.

I am going to say right now, I think if you get past what the jury has requested, you are getting into areas which the attorneys want to read and there is nothing whatsoever unfair about simply reading the exerpts of the grand jury testimony, and if we go beyond that we will get, as I said, into the situation where one little bit is read and then an attorney wants an offsetting part, and we will stick to what the jury has requested, and that is that.

MR. BLOUSTEIN: May I have an exception.

lhjw 291

THE COURT: You have an exception. All defense counsel have an exception.

(Jury present)

THE COURT: We have a note, I will just read it into the record, received about 4:25 p.m.:

"We would like to cancel Mr. Levine's direct testimony but would like his grand jury testimony admitted as evidence. No further requests at this time for Jackson."

All right. We will read Mr. Levine's grand jury testimony admitted into evidence. I want to make it clear, I am just literally taking you at your word. It is just the grand jury testimony, no surrounding questions or colloquy.

If you want any of that, you should of course ask for it.

(Record read)

(Jury resumed deliberations at 4:50 p.m.)

(In the robing room)

MR. WALLACH: Your Honor, all the attorneys for the defendants are constrained to move the Court for a mistrial because of the reading of the grand jury testimony that was read into the record before the jury at the trial.

It has been brought to my attention that United

lhjw 292

States against Costello, federal grand juries can hear hearsay and all sorts of evidence which would otherwise be inadmissible. The grand jury proceeding is ex parte, it is under the control of the prosecutor, and I think --

THE COURT: We have gone into this. You have your record. The motion is denied.

I think we have to think about what we do as far as timing. The jury certainly indicated they wanted to go back and work. It is ten after five, but I assume there would be a time at which we would want to inquire whether they want to -- whether they are going to complete their work, they want to go for a meal this evening, or they want to go home.

What is your pleasure on that?

MR. ABZUG: My suggestion, your Honor, they really haven't had that much time to actually deliberate today, so I would at least suggest that we wait at least until 7:00 o'clock before we inquire --

THE COURT: You have to worry about food.

MR. BLOUSTEIN: I would go along with what Mr. Abzug just said, wait until 7:00, and if they don't reach a verdict at 7:00, I would then say let's adjourn until tomorrow morning.

MR. WALLACH: Wait a minute.

lhjw 293

MR. BLOUSTEIN: That's my feeling.

MR. WALLACH: I don't know why we don't ask the jury, if they feel that they would rather go out to eat --

THE COURT: Let me ask my clerk, if they are going to eat and come back to deliberate tonight, and what time must they be going out to eat, because we can't let that go too late.

THE CLERK: On most juries we have had we sent the note in around 5:30 because before 6:00 o'clock they have to make arrangements, and they find it very difficult because not many restaurants will serve a group of jurors at the dinner hour in this neighborhood.

THE COURT: If we wait until after 5:30 we get in an awful bind about any kind of arrangements.

MR. PELUSO: Why don't we wait until 5:30 and then ask them if they want to deliberate through the night or go out to eat.

MR. WALLACH: Just to save time, if they decide that they can't decide tonight, are you going to sequester them?

THE COURT: I do not have any motion to sequester them. Is there any motion?

MR. ABZUG: No.

THE COURT: Any motion by the defense?

MR. WALLACH: No.

THE COURT: I do not hear any motion to sequester. We will see you about 5:30.

(Recess)

(Court's Exhibits D and E were marked)

(5:20 p.m., in open court - jury present)

THE COURT: A note received at 5:17 p.m.:

"We are not prepared at this time to vote on a verdict. May we be excused until tomorrow."

Of course you can be, and you have had a long day, and it is a good idea I am sure to get a good night's rest.

The thing I want to caution you about again is do not discuss the case among yourselves or outside until you are officially deliberating tomorrow. You can return at 10:00 o'clock tomorrow.

I am having a motion today and I think you can go back to your old jury room.

One other thing. There are no alternates at this point, so you must remember that your first duty is to carry out your -- the completion of your work in this case. It is very important that you stay healthy and safe overnight and return at 10:00 o'clock tomorrow, because

lhjw 295

we have no alternates to take the place of anybody.

Do not start deliberations tomorrow until you are all together.

We will excuse you now and everybody hold their place.

(Jury excused)

THE COURT: Everybody will hold their place in this court until you are notified by Mr. Zangara that the marshal has taken the jurors down in an elevator.

MR. WALLACH: Your Honor, just as a formality for the record, I will be a little detained tomorrow. Mr. Peluso will cover.

(Court adjourned to December 5, 1975 at 10:00 o'clock to continue deliberations)

nd take
nd day

LHjw 296

UNITED STATES OF AMERICA

v. 75 Cr. 265

JOHN DININO and
VINCENT DE VITO

December 5, 1975
10:25 A.M.

(Trial Resumed)

(In the robing room)

(Mr. Bloustein, Mr. Peluso and Mr. Wallach not present)

THE COURT: I received a note at 10:12 a.m. this morning as follows:

"We need clarification and how to render our verdict or verdicts. Should it be one verdict regarding both defendants on Count 1, conspiracy charge, and then individual verdicts for each separate defendant on each additional count, 2, 4, 5 6 and 7." Signed by the Foreman.

Mr. Abzug is here. We are unable to locate any other counsel, we are unable to locate any defense counsel.

I propose to send a note to the jury, because I think the matter is clear beyond any question, I propose to send a note now as follows:

"In response to your note of this morning

lhjw 297

received at 10:12 a.m., there should be separate verdicts for each defendant on each count, including Count 1."

Do you have any objection to that?

MR. ABZUG: No, your Honor, I think that is entirely proper.

(Recess)

(10:30 a.m. - in the robing room)

THE COURT: Mr. Peluso was delayed in getting here and is now here.

I would like to have the two notes read to him right now.

MR. PELUSO: I read the note.

THE COURT: There was one note from the jury and one response from me. Is that acceptable?

MR. PELUSO: Yes, Judge.

(Recess)

(Court Exhibit F was marked)

(11:10 a.m. - in the robing room)

(Court Exhibit G was marked)

THE COURT: Mr. Bloustein, the exchange of notes that occurred about 10:00 o'clock, is that acceptable?

MR. BLOUSTEIN: Yes, it is, your Honor. I am sorry, I ran down for a cup of coffee.

THE COURT: No problem. It was not a very

lhjw 298

difficult matter.

We have a note at 11:05:

"On Count 1, 3-C, would the implicit threats have to apply to the names mentioned individually or as a group (witnesses)."

Paragraph C of course is in the conspiracy count or it is actually 3-C, and it alleges among the means whereby the defendants would carry out their agreed upon unlawful purpose were the following. C. The defendants John Dinino and Vincent DeVito would make express and implicit threats of physical injury to Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz in the course of collecting and attempting to collect said payments and for the purpose of inducing these persons to make said payments.

The question again is would the implicit threats have to apply to the names mentioned individually or as a group.

Have you got any thoughts, Mr. Abzug?

MR. ABZUG: Yes, I have, your Honor.

My interpretation of that note is, I believe a proper response would be "individually." My interpretation of that note is that the jury is asking whether if they find -- whether they can render a verdict of guilty

under Count 1 if they merely find that John Dinino and Vincent DeVito together made implicit threats against, for example, Ronald Levine and not the remaining six witnesses named in the indictment.

In other words, they do not have to find to render a verdict of guilty under Count 1 that John Dininc and Vincent DeVito made implicit threats against all the people your Honor mentioned.

To render a verdict of guilty under Count 1 they need only find that John Dinino and Vincent DeVito conspiracy to make implicit threats against one of the named witnesses.

THE COURT: Mr. Bloustein?

MR. BLOUSTEIN: I am of the impression that Mr. Abzug is right, although he disagreed with me outside.

THE COURT: You accept that?

MR. BLOUSTEIN: I accept that.

THE COURT: I think that is right.

MR. BLOUSTEIN: I don't like to accept it --

THE COURT: I think that is right.

MR. BLOUSTEIN: I wish I was more resourceful to tell you a reason why it is not right.

THE COURT: What about that?

MR. PELUSO: I would go along.

lhjw 300

THE COURT: I think we should bring the jury in and we will answer the question.

(In open court - jury present)

THE COURT: Ladies and gentlemen, we have your note received at 11:05:

"On Count 1, Paragraph 3-C, would the implicit threats have to apply to the names mentioned individually or as a group," and then at the end of the note you had "witnesses".

I believe this will be an answer to your note, and if it is not, if we are misreading the note, why, let us know again.

Basically the answer is that in order to convict on Count 1, and I am focusing now on Paragraph 3-C and I am not reciting all the elements, I am focusing on the reference in your question, in this regard you need only find that defendants Dinino and DeVito conspired to make implicit threats against one of the named persons.

In other words, it is not necessary that you find a conspiracy to make implicit threats against all the persons referred to. It is sufficient -- for instance, let us suppose that you do not find that there was a conspiracy to make implicit threats against certain of these people but you find that there was a conspiracy to

lhjw 301

make implicit threats against other or only one. That would be sufficient.

Does that answer your question?

JUROR NO. 1: I believe it does.

THE COURT: Thank you.

(Jury resumed deliberations at 11:20 a.m.)

(12:10 p.m. - in open court - jury present)

THE COURT: I have a note that the jury has reached a verdict, and you ask how to render them. The clerk, Mr. Zangara, will just ask you what your verdict is on each count for each defendant. I think this will be clear. I am sure Madam Foreman has her notes. So we will proceed.

THE CLERK: Madam Forelady, will you stand, please.

Madam Forelady, ladies and gentlemen of the jury, how do you find the defendant Dinino on Count 1?

THE FORELADY: Guilty as charged.

THE CLERK: On Count 2?

THE FORELADY: Guilty as charged.

THE CLERK: Count 4?

THE FORELADY: Guilty as charged.

THE COURT: Please, I want order in the courtroom.

lhjw 302

THE CLERK: Count 5?

THE FORELADY: I am getting mixed up with the numbers.

THE CLERK: Let's go over that again.

Count 1?

THE FORELADY: Guilty as charged.

THE CLERK: Count 2?

THE FORELADY: Guilty as charged.

THE CLERK: Count 4?

THE FORELADY: Guilty as charged.

THE CLERK: Count 5?

THE FORELADY: Guilty as charged.

THE CLERK: Count 6?

THE FORELADY: Not guilty.

THE CLERK: Count 7?

THE FORELADY: Guilty as charged.

THE CLERK: On defendant DeVito, how do you find on Count 1?

THE FORELADY: Guilty as charged.

THE CLERK: On Count 2?

THE FORELADY: Guilty as charged.

THE CLERK: Count 4?

THE FORELADY: Guilty as charged.

THE CLERK: Count 5?

lhjw 303

THE FORELADY: Guilty as charged.

THE CLERK: Count 6?

THE FORELADY: Not guilty.

THE CLERK: Count 7?

THE FORELADY: Guilty as charged.

THE COURT: Does anyone wish the jury polled?

MR. BLOUSTEIN: Yes, if your Honor please. May we have the jury polled?

THE COURT: Yes.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded.

You say you find the defendant Dinino guilty on Counts 1, 2, 4, 5 and 7 and not guilty on Count 6.

You say you find the defendant DeVito guilty on Counts 1, 2, 4, 5 and 7 and not guilty on Count 6.

(To the question, "Is that your verdict," all the jurors responded, "Yes".)

THE COURT: Ladies and gentlemen, I want to thank you for your hard work and careful attention in this case and for your obvious careful work and good judgment in the verdicts that you have rendered.

I want to say to you that now that you have concluded your deliberations, you are free to discuss the case as you wish.

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